TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19[illegible]

No. [illegible]

R. S. HOLLINS, SR., R. S. HOLLINS, JR., [illegible]
AND JOHN A. HOLLINS, COPARTNERS UNDER THE
FIRM NAME OF HOLLINS, SONS & [illegible]
THOMAS D. FITE, WILLIAM PORTER [illegible]
W. J. PORTER, L. F. DAVIS, A. J. [illegible]
BENTLEY, COPARTNERS UNDER THE NAME OF
FITE, PORTER, LYLES & COMPANY, [illegible]

vs.

THE BRIERFIELD COAL AND IRON COMPANY, [illegible]
CHAMBERS, TRUSTEE, THOMAS J. PETER, [illegible]

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE MIDDLE DISTRICT OF ALABAMA.

FILED OCTOBER 19, 1892.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1423.

R. S. HOLLINS, SR., R. S. HOLLINS, JR., JOHN DICKINSON AND JOHN A. HOLLINS, COPARTNERS UNDER THE FIRM NAME OF HOLLINS, SONS & COMPANY, AND THOMAS D. FITE, WILLIAM PORTER, A. G. PORTER W. J. PORTER, L. F. DAVIS, A. J. LYLES, AND J. E. BENTLEY, COPARTNERS UNDER THE FIRM NAME OF FITE, PORTER, LYLES & COMPANY, APPELLANTS,

vs.

THE BRIERFIELD COAL AND IRON COMPANY, W. L. CHAMBERS, TRUSTEE, THOMAS J. PETER, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

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1 May Term, 1889.

At a circuit court of the United States for the middle district of Alabama, in the fifth judicial circuit, begun and held at Montgomery, Alabama, on the sixth day of May, it being the first Monday of said month, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Honorable John Bruce, judge of the district courts of the United States for the middle and northern districts of Alabama, sitting as circuit judge.

WEDNESDAY, *July 24th*, 1889.

The following proceedings were had:

* * * * * * *

Original Bill.

Circuit Court of the United States for the Middle District of Alabama, in the Fifth Circuit.

HOLLINS, SONS & CO. *et als.*
vs.
THE BRIERFIELD COAL AND IRON COMPANY *et als.* } 107.

To the judges of the circuit court of the United States for the middle district of Alabama, in the fifth circuit, sitting in equity:

R. S. Hollins, Sr., R. S. Hollins, Jr., John Dickinson, and John A. Hollins, who are resident citizens of the State of Tennessee,
2 trading as copartners under the firm name of Hollins, Sons & Company; Thomas D. Fite, William Porter, A. G. Fite, W. J. Porter, L. F. Davis, R. J. Lyles, and J. E. Bently, who are resident citizens of the State of Tennessee, trading as copartners under the firm name of Fite, Porter, Lyles & Company, who sue as well on behalf of themselves as of all other creditors of the Brierfield Coal and Iron Company who may hereafter come in and contribute to the expenses of this suit, bring this their bill against the City National Bank of Selma, a citizen of said State, a corporation under the laws of the United States, located at and doing business in the city of Selma, Dallas county, Alabama, in said middle district; James T. Fitzgerald and Caswell C. Huckabee, who are citizens of the State of Alabama and reside in the county of Perry, in said State; The Brierfield Coal and Iron Company, a corporation created and existing under and by virtue of the laws of Alabama and a citizen of the State of Alabama; Thomas J. Peter, John G. Murray, W. D. Carter, Kearsley Carter, who are citizens of the State of Alabama and reside in the county of Bibb, in said State; Robert
3 L. McCalley, who is a citizen of Alabama and resides in Talladega county; The Alabama National Bank, a banking corporation created and organized under the laws of the United States, a citizen of said State of Alabama; The Commercial Bank of Selma,

a corporation created and organized under the laws of Alabama and a citizen of Alabama; M. S. Pomeroy, who is a citizen of the District of Columbia; Preston B. Plumb and Carrie S. Plumk, his wife, who are both citizens of the State of Kansas, residing at Emporia, in said State; Esther A. Peter, wife of Thomas J. Peter, a citizen of Alabama; Justin S. Morrill, a citizen of Vermont, residing at Strafford, in said State; Georg- I. Seeney, Calvin S. Brice, and Samuel Thomas, citizens of the State *of the State* of New York, and Laura E. Williams, a citizen of Ohio, residing at Cincinnati, in said State.

Thereupon your orators complain and say that the defendant, The Brierfield Coal and Iron Company, is a corporation organized under the general incorporation laws of Alabama in the month of May, in the year 1882; that the capital stock of said corpora-
4 tion was fixed at seven hundred and fifty thousand dollars, and that said corporation was engaged in the manufacture of iron and nails at Brierfield, in the county of Bibb, in the State of Alabama; that the said corporation, during the years 1886 and 1887, became indebted to orators, said firms, for goods, wares, and merchandise sold by orators at various times, and on the 11th day of February, 1887, the said Brierfield Coal and Iron Company executed and delivered to orators, Hollins, Sons & Company, its two promissory notes, each for the sum of $1,002.13, bearing date the said 11th day of February and payable on the 20th of August and the 20th of September after date, respectively, at the Commercial Bank of Selma, Alabama, which said notes and the interest thereon are now due and payable; and orators further aver that on said 11th day of February said Brierfield Coal and Iron Company executed and delivered to the said Hollins, Sons and Company its other promissory note for the sum of $1,002.13, bearing date said 11th day of February and payable on the 20th day of October after date, all of which said notes, with the interest
5 thereon, *and* now due and payable; and afterwards, to wit, on the 17th day of June, 1887, said Brierfield Coal and Iron Company executed and delivered to the said Hollins, Sons & Company its two other promissory notes for the sum of $1,172.43 each, one payable on the 3rd day of December after date and the other on the fifth (5th) day of January, 1888, which said two last-mentioned promissory notes are yet due and payable.

And orators aver that afterwards, to wit, on the 28th day of February, 1887, said Brierfield Coal and Iron Company was indebted to the said Fite, Porter, Lyles and Company for goods, wares, and merchandise theretofore sold and delivered to it by the said Fite, Porter, Lyles and Company, and on said 28th day of February, 1887, said Brierfield Coal and Iron Company executed and delivered to said Fite, Porter, Lyles & Company promissory notes bearing date said 28th day of February for the amounts and payable as follows: One note for $1,900.85, payable on the first day of September after date; one note for $1,913, payable on the first day of October after date; one note for $1,925.14, payable on the
6 first day of November after date, and one note for $359.40, payable on the 25th of November after date; and orators aver

that the said notes due on the first day of September and the first day of October, respectively, are past due and with the interest thereon are now due and payable; and orators aver that the other said promissory notes are not yet due and payable. Orators further aver that said Brierfield Coal and Iron Company is also indebted to the said Fite, Porter, Lyles and Company upon an account stated for goods, wares, and merchandise sold and delivered to the said company in, to wit, the sum of $3,618.72, which said sum, with the interest thereon, is now due and payable.

And orators, on information and belief, aver that the said capital stock was divided into 7,500 shares of the par value of one hundred dollars each; that after the said seven thousand five hundred shares of capital stock — fifty per cent thereof, amounting to the sum of three hundred and seventy-five thousand dollars, was subscribed for as follows:

Thos. J. Peter and associates		$120,000
E. A. Peter		50,000
R. L. McCalley		5,000
C. C. Huckabee		15,000
G. I. Seney and associates		75,000
7 C. S. Plumb		50,000
Plumb & Hood		50,000
Justin A. Morrill		10,000

That of the stock subscribed for by George I. Seney and associates thirty shares thereof, amounting to three thousand dollars, were transferred to Calvin S. Brice, and 400 shares thereof, standing in the name of A. O. Beebe, belong to Samuel Thomas.

Orators aver, on information and belief, that the stock subscribed for in the name of C. S. Plumb, to wit, $50,000, and Plumb and Hood, to wit, $50,000, was in fact subscribed for the defendant, Preston B. Plumb, or by his authority. Orators further aver, on information and belief, that the amount due on said subscription of the said several stockholders has never been paid, but whether any part thereof, and, if so, how much and by whom the same was paid, orators do not know. Orators further aver, on information and belief, that at or about the time of the organization of said corporation said Brierfield Coal and Iron Company on, to wit, the 1st day of September, 1882, pursuant to an agreement made by the
8 said stockholders among themselves, the said Brierfield Coal and Iron Company executed $500,000 of bonds in sums of $1,000 each, bearing date the 1st day of October, 1882, payable on the first day of October, 1912, and bearing interest at 6% per annum, and to secure the payment of said bonds said corporation executed a mortgage or deed of trust to the defendant, Preston B. Plumb, as trustee, on all of its property and effects; that by said agreement so made between the said stockholders prior to the organization of the said corporation it was understood and agreed that the said bonds were to be distributed, after the organization of said corporation, among the stockholders thereof without consideration, according to the amount of stock they might respectively take or

hold in said corporation, or upon some other or different arrangement or agreement of like character, the particulars orators are unable to state; and orators, on information and belief, aver that the said $500,000 of bonds were, pursuant to said agreement, issued and distributed among the said several stockholders without any other or further consideration than said agreement, and that the said corporation has received no value for the said bonds;
9 that the said corporation continued its operations until some time in the month of August, 1887; that during all of that time the said corporation paid to the holders of said bonds interest thereon semi-annually according to the tenor thereof; that on the 29th day of July, 1887, said Brierfield Coal and Iron Company, further to secure said bonds, executed and delivered to the said Preston B. Plumb another and further assurance and mortgage on its property and effects, in which said mortgage or deed of trust aforesaid is fully set out, and orators attach hereto copies of said conveyances, marked Exhibit A, and pray that the same may be taken as a part of this their bill, with leave to refer thereto as often as may be necessary; and orators further aver that about the time of or soon after the execution and *and* delivery of the said further assurance, marked Exhibit A, the said Brierfield Coal and Iron Company defaulted in the payment of the interest on the said mortgage bonds, and on, to wit, the 1st day of August, 1887, the said corporation turned over and delivered the whole of its property, machinery, and effects described and set forth in said mortgages or deeds
10 in trust to the said Preston B. Plumb, who by his agent, the said John G. Murray, has taken possession and control of said property and effects so turned over and delivered; and orators further aver that soon thereafter, on, to wit, the 3d day of August, 1887, the said Preston B. Plumb, as such trustee, filed his bill of complaint in this honorable court against the said Brierfield Coal and Iron Company and others, praying your honors to aid him in the administration of the said trust and for other purposes, as will appear by reference to said bill on file in this honorable court: and thereafter, on, to wit, the 11th day of August, 1887, the said Brierfield Coal and Iron Company filed its answer in this honorable court admitting all the allegations of said bill to be true; and orators ask leave to refer to the record in said cause without attaching a copy thereof hereto as often as may be necessary; and orators aver and charge that the said Brierfield Coal and Iron Company, after its organization in 1882, became indebted to your orators and other persons, firms, and corporations, and was at the time it turned over its property and effects aforesaid indebted to persons, firms, and corporations, including your orators, in a large sum,
11 to wit, two hundred thousand dollars, or about that sum; and orators are advised, and on such advice aver and charge, that the said bonds and mortgage are fraudulent and void against them and the other creditors of the said Brierfield Coal and Iron Company; and orators aver that they verily believe that the said Preston B. Plumb, for the purpose of hindering, delaying, and defrauding orators and the others creditors of said corporation, took possession

of said property and effects by his said agent, and filed the said bill in this honorable court; and orators further aver, on information and belief, that the said Preston B. Plumb is indebted to the said Brierfield Coal and Iron Company on his subscription to its capital stock in a large sum, to wit, fifty-eight thousand dollars, or other large sum, and resides out of the jurisdiction of this State, in the State of Kansas; and orators further aver that the said Brierfield Coal and Iron Company, since the first day of August, 1887, has ceased to carry on or exercise its corporate functions, and by the conveyance and surrender of its property and effects has wholly disabled itself from carrying on or performing its corporate functions.

12 Orators further aver, on information and belief, that the present (holders) owners of said bonds are as follows: T. J. Peter, 45 bonds; Esther A. Peter, 245 bonds; Carrie S. Plumb, 100 bonds; Samuel Thomas, 27 bonds; George I. Seney, 40 bonds; C. S. Brice, 3 bonds; Justin S. Morrill, 11 bonds; J. T. Fitzgerald, 13 bonds; John G. Murray, 1 bond; Robert L. McCalley, 5 bonds; Mrs. M. S. Pomeroy, 9 bonds; that the 5 bonds of R. L. McCalley have not been delivered to him by the said Brierfield Coal and Iron Company.

Orators aver, on information and belief, that the said Brierfield Coal and Iron Company is indebted to the defendant, The City National Bank of Selma, Alabama, in the sum of fourteen thousand dollars, evidenced by its promissory notes, and to secure the same there was pledged to said bank 28 of said bonds, of $1,000 each, which said bonds are now held by said bank.

Orators aver, on information and belief, that the said Brierfield Coal and Iron Company is also indebted to the Commercial Bank of Selma in the sum of twenty-two thousand and five hundred dollars, evidenced by its promissory notes, and to secure the payment of the same there was pledged to said bank twenty-six of said bonds, of $1,000 each.

13 And orators aver, on information and belief, that said Brierfield Coal and Iron Company is also indebted to the Alabama National Bank, at Birmingham, in this State, in the sum of eight thousand dollars, evidenced by its promissory notes, and to secure the payment of the same there was pledged nine of said bonds, of $1,000 each.

Orators further aver that they do not know the circumstances under which the said bonds were pledged or hypothecated to the said several banks, nor whether the same are held by them *bona fide*. Orators further aver that W. D. Carter and Kearsley Carter, Jr., claim a lien by virtue of a mortgage on certain of the property of the said Brierfield Coal and Iron Company, which is particularly set forth and described in the agreement, a copy of which is hereto attached and marked Exhibit B, and orators pray that the same may be taken as a part of this bill of complaint. Orators further aver that they do not know how much is due thereon. Orators further aver that the said Brierfield Coal and Iron Company pretends that it has invested in its various works and properties the sum of nine hundred thousand dollars, but orators aver that it is

not true that they have invested the sum of nine hundred
14 thousand dollars or any sum approximating that amount; and orators, on information and belief, aver the facts to be *the* the said original subscribers to the capital stock have never paid the original subscription for the same, but are still indebted therefor to the said corporation; and that although the said mortgage bonds were issued without any consideration therefor paid to the said corporation by the said several persons holding the same, who were stockholders in the said Brierfield Coal and Iron Company, the said Brierfield Coal and Iron Company paid to the said stockholders the interest on the said bonds from time to time, amounting in the aggregate to about the sum of one hundred and fifty thousand dollars.

Orators further aver that from the best information they can obtain the property and effects conveyed by the said Brierfield Coal and Iron Company to the said P. B. Plumb, trustee, will not realize a sufficient sum to pay the amount of bonds outstanding in case orators are mistaken in regard to the issue of the said bonds, and that the only assets or property of the said corporation which would in that event be available for the
15 payment of the creditors of the said Brierfield Coal and Iron Company, including orators, would be the unpaid subscriptions to the capital stock thereof and such sums, if any, as may be due and owing to it from other persons, firms, or corporations indebted to it; that, as hereinbefore stated by orators, the said Brierfield Coal and Iron Company has entirely ceased to perform its corporate functions, and that it now pretends and claims that the amount of unpaid subscriptions *to* about the sum of $125,000, while its outstanding debts and liabilities outside of the said mortgage bonds amount to about the sum of $200,000, and that the said Preston B. Plumb claims and pretends that he is not liable on account of any subscription to the capital stock of the said corporation and does not reside in the State of Alabama.

And orators aver that the said claims and pretenses of the said corporation and of the said P. B. Plumb are not true, but orators aver that unless the affairs and management of the said corporation are placed in the hands of a receiver, who shall have power
16 and authority to collect the sums due said corporation from said stockholders and others and pay over to the said several creditors to whom the said corporation is indebted the several amounts due them, that the same will be wholly lost to orators and the said other creditors. Orators further aver that if they have been misinformed or are mistaken in the allegation in regard to the original issue of the said mortgage bonds, and that any consideration was paid therefor by the said persons to whom the same were issued, orators aver that the same were issued and sold at a price greatly less than their nominal or face value, and that the said Thomas J. Peter, Esther A. Peter, Carrie S. Plumb, Samuel Thomas, George I. Seney, C. S. Brice, Justin S. Morrill, Robert L. McCalley, J. T. Fitzgerald, John G. Murray, and M. S. Pomeroy well knew that the said bonds were issued for greatly less than their par or face value, and

the same *are*, if a charge at all, can only be a charge or lien on the property of said company in the hands of the stockholders for the actual amount claimed by them; and orators further aver that by and under the statutes of the State of Alabama, before any corporation organized under the general incorporation laws of said State can make any mortgage or deed of trust
17 upon any or all of its property, real and personal, it shall first give public notice for 30 days in some newspaper published in the county where the company has its principal place of business of the time and place and purpose of a meeting of the stockholders to be held to authorize the execution of said mortgage, and at such meeting it shall require the vote of two-thirds in value of all of its stock to authorize said mortgage to be made.

And orators aver that there was at the time of the execution of the said pretended mortgages or deeds of trust, and prior thereto for more than a year, a newspaper published in the county of Bibb, where the said Brierfield Coal and Iron Company has its principal place of business; and orator- aver, on information and belief, that the said Brierfield Coal and Iron Company never gave the notice of the time, place, and purpose of a meeting of its stockholders to be held to authorize the execution of either of the said pretended mortgages or deeds of trust, nor did two-thirds in value of the stock of said corporation vote to authorize the execution thereof; and orators are advised, and upon such advice aver, that the said pre-
18 tended mortgages or deeds of trust are wholly void and inoperative to convey any of the property or effects of the said Brierfield Coal and Iron Company or to create a lien thereon. (3 amendment.)

To the end, therefore, that the said defendants may, if they can, show cause why orators should not have the relief hereinafter prayed, and may, upon their respective knowledge, information, and belief, full, true, direct, and perfect answer make to the statements and averments of this bill of complaint, may it please your honors to grant unto orators writs of subpœna to be directed to the Brierfield Coal and Iron Company, a corporation as aforesaid, whose principal place of business is at Brierfield, in the county of Bibb and State of Alabama; Thomas J. Peter, W. D. Carter, Kearsley Carter, Jr., Esther A. Peter, and John G. Murray, who reside in the county of Bibb, in the State of Alabama; Caswell C. Huckabee and J. T. Fitzgerald, who reside in Perry county, in said State; Robert L. McCalley, who resides in the county of Calhoun, in said State; the City National Bank of Selma, a corporation as aforesaid, and the Commercial Bank of Selma, a corporation as aforesaid, both located in Selma, in the county of Dallas, in this district; the Alabama National Bank, a corporation as aforesaid,
19 located at Birmingham, Alabama, and that publication may be made as to Preston B. Plumb and Carrie S. Plumb, his wife, who reside at Emporia, in the State of Kansas; Justin S. Morrill, who resides at Strafford, in the State of Vermont; Geo. I. Seney, Calvin S. Brice, and Samuel Thomas, each of whom resides in the city and State of New York; Laura E. Williams, who resides

at Cincinnati, in the State of Ohio, and M. S. Pomeroy, who resides at Washington, in the District of Columbia, commanding and requiring the *the* said defendants and each of them to answer, plead, or demur to this bill of complaint within the time and in the manner prescribed by the rules of this court; orators further pray that any of the creditors of the said Brierfield Coal and Iron Company who are willing to contribute to the costs and expenses of this suit may be allowed to come in and make themselves parties complainant in this cause on filing their petitions herein, setting forth their said debts, demands, and claims, and that said matters shall be heard and determined in this cause.

Orators further pray that an account may be taken and stated between the said Brierfield Coal and Iron Company and each
20 of the creditors thereof to ascertain what sums, if any, are due and payable to each of them, and that an account may be stated between the said Brierfield Coal and Iron Company and subscribers and stockholders thereof to ascertain what amount, if any, is due and owing from each of said subscribers or stockholders, and that your honors will appoint a receiver of the property and effects of every description, with power and authority to collect, by suit or otherwise, the unpaid stock subscriptions to the defendant, The Brierfield Coal and Iron Company, to be distributed *pro rata* among the creditors thereof, and that your honors will by decree declare that the said mortgages or deeds of trust are fraudulent and void against the creditors of the said Brierfield Coal and Iron Company, or that your honors may declare that the said mortgages or deeds of trust are void and create no lien or charge upon the property and effects of the said Brierfield Coal and Iron Company (or if it shall appear that the bonds of said Brierfield Coal and Iron Company were issued for any consideration that the said mortgages or deeds of trust are a lien or charge upon the property and effects of said Brierfield Coal and Iron Company only to the extent of the sums actually advanced upon or for said bonds)

21 And may it please your honors to grant unto your orators the writ of injunction issuing out of and under the seal of this honorable court or issued by one of your honors, according to the statute in such cases made and provided, directed to the said Preston B. Plumb and to the said John G. Murray, his agent, also defendant, and the said Thomas J. Peter, commanding, enjoining, and restraining the said defendants and each of them, their servants, agents, and attorneys, from interfering with in any manner the property and effects of the defendant, The Brierfield Coal and Iron Company, and that the said Preston B. Plumb, trustee, his agents and attorneys, be restrained from further prosecuting said suit in this honorable court by the order of your honors, and that your orators may have such other or further relief in the premises as the nature *of* the circumstances of this case may require and to this honorable court shall seem meet; and as in duty bound orators will ever pray, &c.

TROY, TOMPKINS & LONDON,
Sol's for Complainants and of Counsel.

UNITED STATES OF AMERICA,
Middle District of Alabama.

Circuit Court, Fifth Circuit.

22 Before me, Benj. P. Seals, a commissioner of said court, personally appeared Alexander T. London, who is personally known to me, who, being duly sworn, says he is one of the solicitors of the complainants; that he has read the foregoing bill of complaint and knows the contents thereof; that as to the matters therein alleged as of the knowledge of complainants he knows from information derived from complainants and from the possession of the notes and other evidences of indebtedness and from the pleadings on file in this court in the cause of P. B. Plumb, trustee, against The Brierfield Coal and Iron Company and others that the same are true, and as to those matters therein alleged on the information and belief of complainants affiant believes the same to be true, and the sources of his information are as above stated in addition — inquiries and examination made by him as such solicitor.

Affiant further says that the reason why this affidavit is not made by one of the complainants is that they are all residents of the State of Tennessee and affiant has had greater facilities for acquiring information as to the matters therein alleged.

ALEX. T. LONDON.

Sworn to and subscribed before me this 28th day of October, 1887.

BENJ. P. SEALS,
U. S. Comm'r, Mid. Dist. of Alabama.

23 EXHIBIT A.

THE STATE OF ALABAMA,
Bibb County.

Whereas, on the first day of September, A. D. 1882, the Brierfield Coal and Iron Company of Alabama, party of the first part, made a deed of conveyance to Preston B. Plumb, of Emporia, in the State of Kansas, party of the second part, which deeds, with the lawful acknowledgements of its execution thereon endorsed and the certificates of its registration thereon, is in the words and figures following, to wit:

This indenture, made this the first day of Septemper, A. D. 1882, between the Brierfield Coal and Iron Company of Alabama, a corporation created and organized under the laws of the State of Alabama, party of the first part, and Preston B. Plumb, of Emporia, in the State of Kansas, party of the second part, witnesseth:

That the said party of the first part has resolved to execute, issue, and dispose of its bonds to the amount of five hundred thousand dollars, secured by mortgage upon all property now owned by it or to be hereafter acquired, for the purpose of enabling it to pay for the property now held by it and to obtain means with which to

transact and carry on its business, all of which bonds bear date the first day of October, A. D. 1882, and become due thirty years from their date, and are of like tenor and in the form following:

24 The Brierfield Coal and Iron Company of Alabama.

No.—. $1,000.

First-Mortgage and Sinking-Fund Gold Bonds.

Limited to $500,000.

Know all men by these presents that the Brierfield Coal and Iron Company of Alabama, a corporation created and organized under the laws of the State of Alabama, hereby acknowledge- itself to owe Preston B. Plumb, trustee, or bearer, the sum of one thousand dollars in gold coin at par of the United States of America, to be paid at the office of the company, in Brierfield, Bibb county, State of Alabama, or at the office of said company, in the city of New York, State of New York, on the first day of October, A. D. one thousand nine hundred and twelve, with interest on said sum from and after the date hereof, at the rate of six per cent. per annum, in gold coin as aforesaid, payable at said office on the first days of April and October of each year, until the said principal shall be fully paid, on the presentation and surrender of the annexed coupons as they respective- become due. Said coupons shall be payable to the bearer thereof, — the bond is registered or not.

This bond is one of a series, limited to and aggregating the sum of five hundred thousand dollars, and is secured by a deed of trust or first mortgage, bearing date September 1st, 1882,
25 duly executed and delivered by the said Brierfield Coal and Iron Company of Alabama to the said Preston B. Plumb, trustee, of all the property now owned by the said company or that may hereafter be acquired by it in the State of Alabama, and is embraced in the sinking-fund provision therein contained and subject to them. This bond shall pass by delivery unless registered, or, if registered, by transfer on the books of the company, at its office, in Brierfield, Bibb county, in the State of Alabama, or at any other place which the company may determine. After a registration of ownership, certified herein by the transfer agent of the company, no transfer, except upon the books of the company, shall be valid unless the last transfer be to bearer, which shall restore transferability by delivery, but this bond shall continue subject to successive registration and transfer to bearer as aforesaid at the option of each holder. This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon and duly signed by the said trustee.

In witness whereof the said company have caused its seal to be hereto affixed and these presents to be signed by its president and attested by its secretary on the first day of October, A. D. 1882.

[SEAL.] THE BRIERFIELD COAL AND IRON COMPANY OF ALABAMA,

By —— ——, *President.*

Attest: —— ——, *Secretary.*

26 Now, therefore, this indenture witnesseth: That said party of the first part, in consideration of the premises and the sum of one dollar to it in hand duly paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid issued or to be issued as herein directed and provided and every part of the said principal and interest as the same shall become payable, according to the tenor of said bonds and of the coupons thereto annexed, hath granted, bargained, sold, conveyed, and transferred, — does by these presents grant, bargain, sell, convey, and transfer, unto the said party of the second part, trustee as aforesaid, his heirs and assignees, all of the real and personal property now owned by said company situated in the State of Alabama, and all the real and personal property that may hereafter be acquired and owned by said company wherever the same may be situate, together with all the franchises, tolls, incomes, rents, issues, and profits of said company, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same and any and every part thereof, with the
27 appurtenances thereto belonging; to have and to hold the same unto the said party of the second part, his successors, heirs, executors, administrators, and assigns, to his and their own use and benefit and behoof forever; in trust, nevertheless, and to and for the uses and interests and purposes hereinafter limited, described, and declared—that is to say:

First. Until default shall be made in the payment of the principal or interest of the said bonds or some of them, or until default be made in respect to something by these presents required to be done, observed, performed, or kept by the party of the first part, the said party of the first part shall be suffered and permitted to possess, manage, operate, and enjoy all the property and the tolls, incomes, rents, profits, and appurtenances thereof hereinbefore conveyed, to mine, dig, excavate, and remove coal and iron ore underlying its real estate and every part thereof and sell the same in the same manner and with the same effect as if this deed had not been made, except as hereinafter provided.

Second. It shall be the duty of the party of the first part, in addition to providing for and paying the interest — said bonds, to provide for and pay into the hands of said trustee as a sinking fund the sum of eight thousand dollars on the first of October in
28 each and every year, begin-ing with the year 1884, until said bonds and the interest thereof shall be fully paid or until said bonds shall all have been purchased or drawn for — said sinking fund, as hereinafter provided. All sums of money paid into the hands of said trustee for such sinking fund and all its accumulations from whatever source derived shall be invested in the purchase of the bonds issued pursuant to this deed of trust at as low a price as the said trustee can obtain them for by advertising for bids once a year in the market of the city of New York or by buying them at private sale if he can do so

more cheaply, even after he has advertised for bids, but the said trustee shall in no case pay more than ten per cent. premium on the face of said bonds and accrued interest, and if the same cannot be obtained for such prices the said trustee is to invest all money in his hands above what is required for a reasonable compensation for his services by depositing it in a trust company. All bonds issued pursuant to this deed which may be purchased by the trustee shall be held as an investment of said sinking fund, and shall be stamped as belonging to said fund and shall thereafter not be negotiable.

29 Third. In case default shall be made in the payment of any interest on any of the aforesaid bonds issued pursuant to this deed or in any case the party of the first part shall — to pay the said trustee each year for the sinking fund the sum hereinafter provided for or shall fail to do or keep any requirements to be done or kept by the party of the first part, and in case such default shall continue for the period of six months, it shall be lawful for the said trustee or his successors to enter into or upon all and singular the property and premises hereby conveyed and each and every part thereof, and to have and hold and use the same, operating, by its superintendents, managers, receivers, servants, attorneys, or agents, the business of said party of the first part, and to continue the conduct thereof; to make from time to time all repairs, additions, improvements, alterations, and outlays as may seem to said trustee judicious or necessary; to collect and receive all tolls, freights, incomes, rents, issues, and profits of the same and every part thereof, and after deducting the expenses of operating and conducting the business of said party of the first part and the costs of all said repairs, additions, improvements, alterations, and outlays, and all payments which may be made for taxes, assessments, charges, or liens prior to the lien created hereby on said property and premises and any part thereof, and a reasonable compensation for his own services,

30 to apply the moneys arising as aforesaid to the payment of the interest upon said bonds in the order in which such shall have become or shall become due, ratably to the persons holding the coupons evidencing the rights to such interest, and after paying all interest which shall have become due to apply the same to the satisfaction of the principal of said bonds which may at that time be unpaid ratably and without distinction or reference.

Fourth. In case default shall be made as aforesaid and shall continue as aforesaid, — in case default shall be made in the payment of the principal of any of said bonds or any part thereof, and such default shall continue for a period of six months, as aforesaid, it shall likewise be lawful for the said trustee or his successors, after entry as aforesaid, to sell and dispose of all and singular the property and premises hereby conveyed at public auction, either in the city of Montgomery, Ala., or at such place within the State of Alabama as he may designate and at such time as he may appoint, having first given notice of the time and place of such sale by advertisement to be published not less than three times a week for six weeks in one or more newspapers in the city of Montgomery, Alabama, and the city of New York, respectively,

and to adjourn the sale from time to time in his discretion,
31 and if *as* adjourning to make the same at the time and place to which the same may be so adjourned, and upon such sale to make and deliver to the purchaser or purchasers of *of* the property so sold good and sufficient deed or deeds in law for the same, which sale shall be a perpetual bar in law and equity against the party of the first part and all other persons whomsoever lawfully claiming or to claim said property and premises or any part thereof by, from, through, or under it, and after deducting from the proceeds of such sale just allowance for the expenses of such sale, including attorneys' and counsels' fees and all other expenses, advances, or liabilities which may have been made or incurred by the said trustee in operating or conducting the business of the party of the first part while in possession, and all payments which may have been made by him for taxes or assessments on said premises or any part thereof, as well as reasonable compensation for his own services, to apply the balance of the payment of the principal of such of said bonds as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, ratably to
32 the aggregate amount of such unpaid principal and accrued and unpaid interest, and, if after satisfaction thereof a surplus of the proceeds shall remain, to pay over the same to the said party of the first part or to whomsoever may be lawfully or equitably entitled to receive the same; and it is hereby declared that the receipt of the trustee shall be a sufficient discharge to the purchaser or purchasers of the premises for their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, administrators, or assigns, shall not, after payment thereof and having such receipt, be liable to see to its being applied upon or for the trusts and purposes of these presents, or in any manner whatsoever be answerable for any loss, misapplication, or non-application of such purchase-money or any part thereof, or be obliged to enquire into the necessity, expediency, or authority of or for any such sale.

Fifth. In case a default shall be made in the payment of any half-year's interest on any of the aforesaid bonds at the time and in the manner specified in the compromises therewith (provided the said coupons have been presented and the payment of the interest therein specified has been demanded), and in case such default shall continue for six months after the said coupons shall have become due and payable, then and thereupon the principal of
33 all the bonds secured hereby shall, at the election of the trustee, become immediately due and payable, anything contained in said bonds (or herein) or herein to *be* contrary notwithstanding; but a majority in interest of the holders of said bonds may, by an instrument in writing signed by such majority before the interests in arrears shall be paid, instruct said trustee to declare the said principal to be due, or to waive the right so to declare on such terms and conditions as such majority shall deem proper, or may annul or reverse the election of the trustee, provided no action of

the trustee or bondholders shall extend to or be taken to affect any subsequent default or to impair the rights resulting therefrom.

Sixth. The party of the first part shall, from time to time and at all times hereafter and as often as thereunto requested by such trustee, execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in law for the better assuring to said trustee upon the trusts herein expressed the said property and premises and every part thereof hereinbefore conveyed or intended so to be conveyed, and all property and franchises now held or hereafter acquired, as by said trustee or by his counsel learned in the law shall be reasonably advised, devised, or acquired.

34 Seventh. The trustee shall have full power in his discretion, upon written request of the party of the first part, to sell, convey, and exchange any of the property hereinbefore conveyed or intended to be conveyed which may be proper or necessary to be sold, conveyed, or exchanged in the operation or conduct of the business of the party of the first part, and which may become unnecessary in the transaction of the business of the said party of the first part; and it shall be the duty of the party of the first part to sell and dispose of any of the property that may be unnecessary for the transaction of its business and which can be sold without loss and at a fair price, and to make, acknowledge, and deliver proper conveyance to carry the same into effect; but any land which may be acquired or exchanged for any of the property herein conveyed or intended to be conveyed shall inure to and be covered by this deed as after-acquired property hereinbefore designated, and all moneys arising from sales of any of the property herein conveyed or intended to be conveyed shall be paid to the trustee and shall constitute a part of the sinking fund hereinbefore mentioned until such time as the said sinking fund shall, with its accumulations from whatever source, equal the par value of said

35 bonds and ten per cent. added thereto and accrued interest thereon, after which the proceeds of all said sales shall be retained by the party of the first part.

Eighth. If the party of the first part shall well and truly pay the principal of said bonds and every one of them and all interest thereon when the same shall become due and payable, according to the tenor of said bonds and coupons issued therewith, and shall truly observe, perform, and keep all and singular the several things herein required by it to be performed or kept, according to the true intent of this deed, then and in that case all the estate, right, and title and interest of the said trustee, party of the second part, and of his successor in the trust hereby created shall cease, determine, and become void; otherwise the same shall be and remain in full force and virtue.

Ninth. It is hereby declared and agreed that it shall be the duty of the trustee to execute the power of entry or the power of sale hereby granted, or both, or to take the appropriate proceedings in equity or at law or both to enforce the rights of the bondholders under this deed upon requisition in writing—that is to say, if the

default be as to the interest, sinking fund, or principal of said
36 bonds, such requisition upon the said trustee shall be by holders of not less than a majority in amount of said bonds, and upon such requisition and a proper indemnification by the persons making the same to said trustee against all costs and expenses to be by him incurred it shall be the duty of said trustee to enforce the rights of all the bondholders under this deed by entry, sale, or legal proceedings, as he shall deem most expedient, for the interest of all the bondholders of said bonds. If the default shall be in the omission to comply with any other provision herein contained to be performed or kept by said party of the first part, then and in such case the requisition shall be as aforesaid, but it shall be within the discretion of said trustee to enforce or waive the rights of the bondholders by reason of such default, subject to the power hereby declared of a majority in interest of the holders of said bonds; by requisition in writing signed by such majority, to instruct said trustee to waive such default, or upon adequate indemnity, as aforesaid, to enforce their rights by reason thereof, provided that no action of said trustee or bondholder or both, in waiving such default or otherwise, shall extend to or be taken to effect any subsequent default or to impair the rights resulting therefrom.

37 Tenth. The party of the first part agrees that in case of a sale of said property under judicial proceedings to foreclose the same may be sold as an entire piece of property or in separate pieces or parcels as the said trustee may, in his discretion, determine.

Eleventh. It is mutually agreed by and between the parties hereto that in case the trustee herein appointed or any successor of said trustee shall die or resign or be removed a successor may be appointed by the party of the first part, subject to the approval of a majority of the bondholders, who shall be notified by a printed notice published ten consecutive days in a newspaper in the city of New York to meet for the purpose of signifying their choice, and in case they do not disapprove of the appointment of the party of the first part within one month after such notice shall have been published the trustee so appointed shall be authorized to act under this agreement. If a majority of the bondholders disapprove and so notify the party of the first part, then the party of the first part shall nominate some other person to be trustee, subject to the approval of the majority of the bondholders as aforesaid, and so on until a trustee shall be appointed to the satisfaction of the majority, provided, nevertheless, and it is hereby declared and agreed, that in case that
38 it shall at any time hereafter prove impracticable after reasonable exertions to appoint a receiver in the manner hereinbefore provided, application in behalf of all the holders of the bonds secured hereby may be made by holders of a majority in amount of said bonds to any circuit court of the United States or to any other court of competent jurisdiction for any judicial district in which said property or any part thereof may be situate for the appointment of a new trustee.

In witness whereof the said party of the first part hath hereunto caused its corporate seal to be affixed and these presents to be signed

by its president and attested by its secretary, and the said party of the second part, trustee as aforesaid, has also hereunto set his hand and seal the day and year first above written.

[SEAL.] THE BRIERFIELD COAL AND IRON COMPANY OF ALABAMA,

(Signed) By T. J. PETERS, *President.*

Attest:

(Signed) JOHN G. MURRAY, *Secretary.*

(Signed) P. B. PLUMB, *Trustee.*

THE STATE OF ALABAMA, }
Bibb County. }

I, Jesse W. Mahon, a justice of the peace in and for said county,
39 hereby certify that T. J. Peters, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the above conveyance, he executed the same voluntarily and by authority of the said Brierfield Coal and Iron Company on the day the same bears date.

Given under my hand this twenty-seventh day of September, A. D. 1882.

(Signed) JESSE W. MAHON, *J. of P.*

STATE OF KANSAS, }
County of Lyon. }

I, J. G. Traylor, clerk of the district court of the county of Lyon and the State of Kansas, hereby certify that P. B. Plumb, whose name is signed to the foregoing conveyance as trustee and who is known to me; acknowledged before me on this day that, being informed of the contents of the above conveyance, he executed the same and accepted said trust voluntarily on the day the same bears date.

Given under my hand and seal of the said district court for the county of Lyon on this twenty-eighth day of October, A. D. 1882.

(Signed) J. G. TRAYLOR,
Cl'k Dist. Court.

STATE OF ALABAMA, }
Bibb County. }

I hereby certify that the within conveyance was filed in
40 my office for record on the sixth day of November, 1882, at — o'clock a. m., and duly recorded in volume S of Deeds, pages 326 to 336, on the 8th day November, 1882.

(Signed) JOHN S. GARDNER,
Judge of Probate.

I hereby certify that this conveyance was filed in the probate office, Shelby county, Alabama, for record July the 20th, 1887, and recorded in Mortgage Book Number Nineteen on page 19.

JAMES T. LEEPER,
Judge of Probate.

STATE OF ALABAMA, }
Chilton County. }

I hereby certify that the within conveyance was filed in my office for record on the 23d day of July, 1887, and recorded in book 18, page 99.

Given under my hand this 23d day of July, 1887.

H. J. CALLEN,
Judge of Probate.

And whereas in the sixth section of said deed of conveyance it is agreed and provided as follows, namely: The party of the first part shall from time to time and at all times hereafter and as often as thereunto requested by such trustee execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in law for the better assuring to said trustee upon the trusts herein ex-
41 pressed the said property and premises and every part thereof hereinbefore conveyed or intended so to be conveyed, and all property and franchises now held as hereafter acquired as by said trustee or by his counsel in the law shall be reasonably advised, devised, or required; and whereas the said Preston B. Plumb, on the 25th day of July, 1887, made the following request in writing for a further conveyance and assurance respecting said property, to wit:

To the Brierfield Coal and Iron Company of Alabama: Pursuant to the promises and obligations of a certain indenture of mortgage made and executed by you to the undersigned as trustee, bearing date September 1st, 1882, for the purpose of securing upon the property therein mentioned and described certain bonds amounting to the total sum of five hundred thousand dollars, I hereby request you to execute, acknowledge, and deliver to me as trustee, as aforesaid, a further mortgage or other proper conveyance, whereby you shall convey to me as trustee as aforesaid, and for the uses and purposes of the trusts in said first-mentioned instrument set out,
42 *and* property, both real and personal, by you acquired since the date of said first-mentioned mortgage, and that you will also in said mortgage or other conveyance accurately and fully set out and describe by numbers, meet-s, and bounds, location, or otherwise all the lands which at the said last-mentioned date were owned by you, and which were covered by or designed to be covered by said first-mentioned mortgage, and which property was made the basis of said mortgage and was actually pledged for the security of the bonds therein mentioned, and also all personal property now owned by you which was so owned at the date of said mortgage, and also all franchises held at said date or hereafter acquired, and also to execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in law for the better answering to me as such trustee upon the trusts expressed in said mortgage, the property and premises therein conveyed or intended to be so conveyed, and all property and franchises then held or thereafter acquired, and generally to do and perform such acts and things as shall make subject

to the assurance and payment of said bonds of five hundred
43 thousand dollars all the property, both real and personal, now owned by you.

Witness my hand this 25th day of July, 1887.

PRESTON B. PLUMB, *Trustee.*

And whereas the said Brierfield Coal and Iron Company, of Brierfield, Alabama, since the ensealing and delivery of said deeds, as above set forth, has, in accordance with the provision thereof, acquired certain personal and real estate, and property and easements, privile*d*ges and appurtenances, which are subject to all the trusts and agreements and covenants in said deed expressed, and are included in said conveyance, but are not therein especially described: Now the said Brierfield Coal and Iron Company, for the purpose of complying with and executing the agreement and covenant in sixth section of said deed contained, and in accordance with the demand of Preston B. Plumb, trustee, and in consideration of the premises, doth by these presents further assure and convey, and further and more specifically describe, the real estate in said deed included and conveyed to Preston B. Plumb, the party of the second part, as the same is more fully designated and described as follows,
44 to wit, the following-described real estate in Bibb county, State of Alabama, and situate in township twenty-two (22) south, range five (5) west: The southwest quarter (¼) of the southwest quarter (¼) of section twelve (12), and the northeast quarter (¼) of the N. E. ¼ and the southwest quarter (¼) of the northeast quarter (¼) of section fourteen (14); and the following real estate in township twenty-four (24) north, range eleven (11) east, namely: The southeast quarter (¼) and the east half (½) of the southwest quarter (¼) and the southwest ¼ of the southwest quarter (¼) of section four (4), and the south half (½) of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the southwest quarter (¼) of section five (5), and the west half of the northeast quarter (¼) and the north half of the southeast quarter (¼) of section six (6), and the east half (½) of the northeast quarter (¼) of section eight (8), and the west half (½) of the northwest quarter (¼) of section nine (9), and the following lands, the southeast quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) of section twenty-four (24), and the northeast quarter (¼) and the south half (½) of section twenty-five (25), and the whole of
45 section twenty-six (26), and the whole of section twenty-seven (27), and the southeast quarter (¼), and the northeast ¼ of the southwest quarter (¼), and the southeast quarter (¼) of the northwest quarter (¼), and the south half (½) of the northeast quarter (¼) of section twenty-eight (28), and all of the land lying south of the tram-road, in the southeast quarter (¼) of section twenty-three (23), and the whole of section thirty-three (33), and the whole of section thirty-four (34), except the northeast quarter (¼) of the southeast quarter (¼), and the northwest quarter (¼) of section thirty-five (35), except the southwest quarter thereof, and the west half of the northeast quarter (¼), and the land lying north of the grade of the

Ashby and Bibb Furnace railroad, in the northeast quarter (¼) of section thirty-five, and also the southwest quarter (¼) of the southwest quarter (¼) of section thirty-five (35), and all the west half (½) of the northwest quarter (¼) of section thirty-six (36) that lies north of the grade of the Ashby and Bibb Furnace railroad, and the west half (½) of *of* the southeast quarter (¼) of section thirty-six (36); also all the iron ore on and the mining rights to the following lands: All of section twenty-two (22), and all the lands owned by estate of J. N. Smith in section twenty one (21), and the north half (½)
46 of section twenty-eight (28), and the west half of the southwest quarter (¼) of section twenty-eight (28), and the south half of southwest quarter (¼) of section twenty-three (23), and the following lands lying in township twenty-three (23) north, range eleven (11) east, namely: All of section one (1) except the south half (½) of the southwest quarter (¼), and all of section two (2) except the southwest quarter (¼) of the northwest quarter (¼) and the northwest (¼) of the southwest (¼) and except northeast quarter (¼) of the northeast quarter (¼) of said section two (2), and all of section three (3) except the southeast quarter (¼) of the northeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) of section three (3), and the northeast quarter (¼) and the east half (½) of the southwest quarter (¼) and the northwest — (¼) of the S. W. ¼ (¼) and the west half (½) of the southeast quarter (¼) of section four (4), and the south half (½) of the north — (½) and the northeast quarter (¼) of the northeast quarter (¼) and the northeast quarter (¼) of the southwest quarter (¼) of section five (5), and the northeast quarter (¼) and the east — (½) of the southeast quarter (¼) of section ten (10), and the
47 whole of section eleven (11) except the southeast quarter (¼) of the southwest quarter (¼) and the south half of the southeast quarter (¼) of said section eleven (11), and the northwest quarter of southwest quarter (¼) of section twelve (12); also the northwest quarter (¼) of northwest quarter (¼) of section five (5), township twenty-three (23) north, range twelve (12) east.

Also the following lands in township twenty-four north, range twelve (12) east, namely: The southwest quarter (¼) of the southwest quarter (¼) and the northwest quarter (¼) of southwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) of section (19) nineteen, and all that portion of the west half (½) of the southeast quarter (¼) of section nineteen (19) lying north and west of the East Tennessee, Virginia & Georgia railroad.

Also the following tract: Commencing at the middle of section nineteen (19) on the south bo-ndary line of said section, thence east on said section line to Mahon's Ford road; thence north to centre of Mahon's creek; thence down said creek to the middle line of section nineteen (19), running north and south; thence south to the point of beginning.

Also the following tract of land: The southeast quarter (¼) of the northeast quarter (¼) and that portion of the southwest quar-
47½ ter (¼) of the northeast quarter (¼) that lies east of the East Tennessee, Virginia & Georgia railroad, in section nineteen

(19), and the north half of the northeast quarter (¼), and twenty-five (25) acres lying west of the East Tennessee, Virginia and Georgia railroad, in the southwest quarter (¼) of the northeast quarter (¼) and the east half (½) of the northwest quarter (¼), except two and twenty-three hundredths ($2\frac{23}{100}$) acres on the east side of Mahon's creek and south of the line commencing in the south line of the northwest quarter (¼) at a point from and fifty one-hundredths chains west of the southeast corner of said quarter section and thence running north seventy-one (71°) degrees west magnetic bearing to Mahon's creek; also the following tract in the northeast quarter (¼) of the southwest quarter (¼): Commencing at the northeast corner of said southwest quarter (¼), thence (80) eighty rods south to the southeast corner of the northeast quarter (¼) of the southwest quarter (¼), thence west ten and fifty-hundredths chains, thence north eleven and one-half degrees east magnetic bearing to the north line of said quarter section, thence east on said line four and fifty-hun-
48 dredths chains to first point, containing fifteen (15) acres; also two and one-half ($2\frac{1}{2}$) acres in the southwest corner of the northeast quarter (¼) of the southwest quarter (¼), which lies south of the old tram-road; also the following tract: Commencing at the southwest corner of the northeast quarter (¼) of the southwest quarter (¼), thence running east along the south side of said forty-acre tract six hundred and twenty-four (624) feet, thence north fourteen degrees and twenty minutes (14° 20m) east magnetic bearing one hundred and thirty-four (134) feet, thence north twelve degrees east (12°) magnetic bearing four hundred and twenty-six (426) feet, thence south fifty-one degrees and thirty minutes (51° 30′) west one hundred and eighty-eight (188) feet, thence south seventy-eight degrees and fifteen minutes (78° 15′) west one hundred and thirty-four feet (134), thence parallel to south line of forty-acre tract three hundred and ninety and four-tenths ($390\frac{4}{10}$) feet to a point one hundred and twenty (120) feet east of the west line of said forty-acre tract, thence north eight hundred and fifty-four and four-tenths (854.4) feet parallel to the west line of said forty-acre tract to the north line of said northeast quarter (¼) of the southwest quarter (¼), thence west along said line one hundred and twenty (120) feet, thence south
49 thirteen hundred and twenty (1320) feet to first point; also the following tract: Commencing at the southwest corner of the southwest quarter (¼) of northwest quarter (¼), thence easterly ninety-one and six-tenth- feet (91.6) along south line of said quarter section; thence northerly parallel to west line of quarter section about five hundred (500) feet to the center of Mahon's creek; thence down said creek to west line of section nineteen (19); thence southerly about (480) four hundred and eighty feet along said section line to point of begin-ing, all of the above tracts being in section nineteen (19); and the south half (½) of the northeast quarter (¼) and the west half (½) of the southeast quarter (¼) of section twenty-nine (29), and the north half (½) of the northwest quarter (¼) and the east half (½) of the southeast quarter (¼) of the northwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) and the southwest quarter (¼) of the southeast quarter (¼) and the west half of the

northwest quarter (¼) of the northeast quarter (¼); and the following-described tract: Commencing at the southeast corner of the northwest quarter (¼) of the northeast quarter (¼), thence north four and one-half degrees (4½°) west eleven and fifty-hundredths (11.50) chains; thence south eighty-five and one-half degrees (85½°) west ten (10) chains; thence south four and one-half degrees (4½°) east eleven and fifty-hundredths (11.50) chains; thence north eighty-five and one-half degrees (85½) east ten (10) chains to first point; also a triangular piece commencing at the northwest corner of the above lot, thence north seven (7°) degrees east three and twenty-five hundredths chains; thence north seventy-seven degrees (77°) west sixty-five (65) links to a point on north and south line, all of the above tracts being in section thirty (30); also the south half of the northeast quarter (¼) & the N. E. ¼ of the southeast quarter (¼) of section thirty-one (31); also the south half (½) of the northwest quarter (¼) and the northwest quarter (¼) of the N. E. ¼ and the south half (½) of the southwest (¼) and the west half (½) of the southeast quarter (¼) of section thirty-two (32).

And the following-described real estate situate in Shelby county, State of Alabama: The southwest quarter of the southeast quarter (¼) of section nineteen (19), township twenty-one (20) south, range two (2) west, and the southwest quarter of the northeast quarter
51 of section thirty-five, township nineteen (19) south, range three (3) west, and the southwest quarter (¼) of the northwest quarter (¼) of section two (2), township twenty (20) south, range three (3) west, and the south half of the southeast quarter (¼), section six (6), township twenty-one (21) south, range three (3) west; and the following lands in township twenty-one (21) south, range three (3) west, namely: The northwest quarter (¼) and the southeast quarter (¼) of the northeast quarter (¼) and the northwest quarter (¼) of the southeast quarter (¼) and the southwest quarter (¼) of the southwest quarter (¼) of section seven (7), and the west half of the northwest quarter of section eight (8), and the southeast quarter (¼) of the northwest quarter (¼) of section seventeen (17); and the undivided half interest in the following lands, namely: The southwest quarter of the northwest quarter (¼) and the north half (½) of the southwest quarter (¼) of section seventeen (17), and undivided half (½) and the north ½ of the southeast quarter (¼) and the southeast quarter (¼) of the southeast quarter (¼) and the northeast quarter (¼) of the southwest quarter (¼) of section (18) eighteen,
52 and the entire interest in the north half (½) of the northwest quarter (¼) and the west half (½) of the southwest quarter (¼) and the northeast quarter of the northeast quarter (¼) and the southwest quarter (¼) of the southeast quarter (¼) of section eighteen (18), and the southeast quarter of the northeast quarter (¼) and the southeast quarter (¼) and the east half (½) of the southwest quarter (¼) of section nineteen (19), and the west half (½) and the west half of the southeast quarter and the northeast quarter of the southeast quarter and the west half (½) of the northeast quarter (¼) and the southwest quarter of the northeast quarter (¼) of section twenty (20), and the southwest quarter (¼) of the northeast quarter (¼) and the

northwest quarter of the southeast quarter (¼) of section twenty-three (23), and the north half (½) of the northwest quarter (¼) and the southwest (¼) quarter of the southwest quarter (¼) of section twenty-nine (29), and the north half (½) of the northeast quarter (¼) and the east half (½) of the southeast quarter (¼) and the southwest quarter (¼) of section thirty (30), and the northwest quarter and the northwest quarter (¼) of the southwest quarter (¼) and the east half (½) of the northeast quarter (¼)
53 of section thirty-one (31), and the northeast quarter (¼) of the northwest quarter (¼) of section thirty-two (32), and the following land in township twenty-two (22) south, range three (3) west, namely: The west half (½) of the northwest quarter (¼), section five (5), the west half of the southeast quarter (¼) and the west half (½) of the east half of the southeast quarter and the southwest quarter (¼) of the northeast quarter (¼) and the northwest quarter of section six (6), and the northwest quarter and the northwest quarter (¼) of the northeast quarter, section seven (7), and the following lands in township twenty-one (21) south, range four (4) west, namely: The east half of the northwest quarter (¼) and the east half (½) of the southwest quarter (¼) and the southwest quarter of the southwest quarter (¼) and the southeast quarter (¼) of section three (3), and the northeast quarter of the northwest quarter (¼) and the southwest quarter (¼) of S. W. ¼ of *of* section six (6) and the north half (½) of the northwest quarter (¼) and the southwest (¼) of the northwest quarter and the southeast quarter (¼) of the northeast quarter of section seven (7), and the northwest quarter (¼) of the northwest quarter (¼) and the southeast quarter of the northwest quarter
54 (¼) and the N. E. ¼ of the S. W. ¼ and the undivided one-third (⅓) interest in the south half (½) of the southwest quarter (¼) of section ten (10), and the south half (½) of the northeast quarter (¼) of section twelve (12), and the whole of section thirteen (13), and the undivided one-third (⅓) interest in the north half of the N. W. ¼ of the N. W. ¼ northeast half (½) of the northwest quarter (¼) and the southwest quarter of the northwest quarter (¼) and the west half of the southwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) and the south half (½) of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the east half of the northeast quarter (¼) of section fifteen (15), and the whole of section sixteen (16), and the west half of the southwest quarter (¼) and the west half (½) of the southeast quarter (¼) and the southeast quarter (¼) of the southeast quarter (¼) of section seventeen (17), and the north half of the northwest quarter (¼) and the southwest quarter and the northwest quarter (¼) of the southeast quarter (¼) and the west half of the northeast quarter (¼) of section nineteen (19), and the undivided one-third (⅓) interest in the northwest quarter (¼) and the whole of the northeast quarter (¼) of section twenty-two (22), and the southeast quarter (¼) of the northwest
55 quarter and the northwest quarter of the southeast quarter (¼) of section twenty-four (24), and the undivided one-third (⅓) interest in the north half (½) of the northwest quarter (¼) and in the southwest quarter (¼) of the northwest quarter (¼) and the whole of

the southeast quarter (¼) of the southwest quarter (¼) of section twenty-eight (28), and the northwest quarter (¼) of the northwest quarter (¼) of section twenty-nine (29), and the west half (½) of the northwest quarter (¼) and the southeast quarter (¼) of the northwest quarter (¼) and the southwest quarter (¼) and the south half (½) of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the south half of the northeast quarter (¼) and the undivided one-third (⅓) interest in the north half (½) of the northeast quarter (¼) & undivided one-third (⅓) interest in the northeast quarter of the northwest quarter (¼) of section thirty (30), and the southeast quarter of the northwest quarter (¼) and the southwest quarter (¼) of the southwest quarter (¼) and the northeast quarter (¼) of the southwest quarter (¼) of section thirty-one (31), and the southeast quarter (¼) of section thirty-two (32), and the southwest quarter of the
56 southwest quarter (¼) and the north half (½) of the southeast quarter (¼) and the southeast quarter of the northeast quarter and the east half (½) of the northwest quarter of section thirty-three (33), and the north half of the northeast quarter (¼) of section thirty-four (34), and the west half of the southwest quarter (¼) and the west half (½) of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the south half of the northeast quarter (¼) of section thirty-five (35), and the west half of the northwest quarter (¼) and the north half (½) of the southwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) and the northeast quarter (¼) of section thirty-six (36), and the following real estate situate in township twenty-one (21) south, range (5) five west, namely: The west half of the northwest quarter (¼) and the east half of the southeast quarter (¼) and the southeast quarter (¼) of the northeast quarter (¼) of section one (1), and the northeast quarter and the west half of the southwest quarter (¼) of section two (2), and the northwest quarter (¼) of the southeast quarter (¼) and the northeast quarter (¼) of the northeast quarter (¼) of section twelve (12), and the north half of the northeast quarter (¼) of section twenty-two,
57 and the west half (½) of the southeast quarter (¼) of section twenty-three (23), and the north half (½) of the southwest quarter (¼) and the southwest quarter of the southeast quarter (¼) of section twenty-four (24), and the west half of the southwest quarter (¼) and the southeast quarter (¼) of the northwest quarter (¼) of section twenty-five (25), and the east half (½) of the southeast quarter (¼) of section twenty-six (26), and the northeast quarter (¼) of the northeast quarter (¼) of section thirty-five (35), and the northwest quarter of the northwest quarter (¼) and the east half (½) of the northeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the undivided one-third (⅓) interest in the southwest quarter (¼) of the northwest quarter (¼) & in the north half of the southwest quarter (¼) and in the northwest quarter (¼) of the southeast quarter (¼) of section thirty-six (36), and following real estate situate in township twenty-two (22) south, range four (4) west, namely: The north half (½) of the northwest quarter and the southeast quarter (¼) of the northwest quarter (¼) and the south half (½) of section one (1), and the northwest quarter (¼) of the northeast quarter (¼) and the south-

east quarter (¼) of the southeast quarter (¼), section two (2), and
58 the northeast quarter (¼) and the south half (½) of the northwest quarter (¼) and the southwest quarter (¼) and the west half of the southeast quarter (¼) and the southeast quarter of the southeast quarter (¼) of section four (4), and the southwest quarter (¼) of the northeast quarter (¼) of section six (6), *in* the southeast quarter (¼) of the northeast quarter (¼) of section eight (8), and the east half (½) of the northwest quarter (¼) and the west half (½) of the northeast quarter (¼) of section nine (9), and the southeast quarter (¼) of the northwest quarter (¼) and the north half of the northwest quarter (¼) of section ten (10), and the north half (½) of the northwest quarter (¼) and the north half (½) of the southeast quarter (¼) of the northwest quarter (¼) and the east half of the southwest quarter (¼) and the southeast quarter (¼) and the south half of the northeast quarter (¼) and the northeast quarter (¼) of the northeast quarter (¼) of section eleven (11), and the north half of the northwest quarter (¼) and the north half (½) of the northeast quarter (¼) and the southeast quarter (¼) of the northeast quarter (¼) and the east half (½) of the southeast quarter (¼) and the southwest quarter (¼) of the southeast quarter (¼) of section twelve (12), and the northwest quarter of the northeast quarter (¼) of section thirteen (13), and
59 the west half (½) of the southwest quarter (¼) of section fourteen (14), and the west half of the northeast quarter and the north half of *of* the south half (½) of section fifteen (15), and the northeast quarter (¼) and the south half (½) of section sixteen (16), and the northwest quarter (¼) and east half (½) of section twenty (20), and the south half (½) of section twenty-one (21), and the east half (½) and the east half (½) of the west half and the northwest quarter (¼) of the northwest quarter (¼) of section twenty-two (22), and the west half (½) and the west half (½) of the east half of section twenty-three (23), and the north half of the northwest quarter (¼) of fractional section twenty-six (26), and the north half of the northeast quarter (¼) of fractional section twenty-seven; and the following real estate situate in township twenty-four (24) north, range eleven (11) east, namely: The whole of section one (1), and the east half (½) and the southwest quarter (¼) and the south half (½) of the northwest quarter (¼) of section two (2), and the east half of the northwest quarter (¼) and the north half (½) of the southwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) and the southeast quarter (¼) and the west half (½) of the northeast quarter (¼)
60 and the southeast quarter (¼) of the northeast quarter (¼) of section three (3), and the north half (½) and the north half of the southwest quarter (¼) and the southeast quarter of section twelve (12), and the north half (½) and the northeast quarter (¼) of the southwest quarter (¼) and the east half (½) of the southeast quarter (¼) of section eleven (11), and the northeast quarter (¼) of section thirteen (13); and the following real estate situate in township twenty-four (24) north, range twelve (12) east, namely: The west half (½) of the west half (½) and the east half (½) of the southeast quarter (¼) of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) of section six (6), and the west half (½) of the southwest quarter (¼)

of section five (5), and the west half of the northwest quarter (¼) and the southeast quarter (¼) of the northwest quarter (¼) and the northwest quarter of the southwest quarter (¼) and the southwest quarter (¼) of the northeast quarter (¼) and the undivided one-half (½) interest in the southwest quarter (¼) of the southwest quarter (¼) of section seven (7), and the northwest quarter (¼) of the northwest quarter (¼) and the east half of the southeast quarter (¼) — section eighteen (18), and the northwest quarter (¼) of the southwest quarter (¼) and the east half (½) of the southwest
61 quarter (¼) of the southwest quarter (¼) of section seventeen (17), and the south half (½) of the northeast quarter and northeast quarter (¼) of the northeast quarter (¼) of section twenty (20), and the northwest quarter (¼) of the southwest quarter (¼) of section ten (10), and the southeast quarter (¼) of the south half (½) of the southwest quarter and that portion of the northwest quarter (¼) of the southwest quarter (¼) which lies south of the Centerville and Montevallo dirt road, all in section nine (9), and the southeast quarter of the southeast quarter and all portion of the entire southeast quarter (¼) of section eight (8) which lies south of the Centerville and Montevallo dirt road, and the mineral interest in and mining rights to the following tract of land, namely: The east half (½) of the northwest quarter (¼) of section seventeen (17), and the southwest quarter (¼) of section twenty-five (25), and the south half of the southeast quarter (¼) of section twenty-six (26), and the northeast quarter (¼) of the northeast quarter (¼) of section thirty-five (35), and the northeast quarter (¼) of the northeast quarter (¼) of section thirty-six (36), all of the above tract being in township twenty-one (21) south, range four (4) west; and the southwest quarter (¼) of section
62 two (2), and the northeast quarter (¼) of the southeast quarter (¼) of section three (3), both of the above tracts being in township twenty-two (22) south, range four (4) west; and the entire interest in the southeast quarter (¼) of the southeast quarter (¼) of section thirty-two (32), township twenty (20) south, range three (3) west; and the following-described real estate situate in Chilton county, State of Alabama, namely, the northwest quarter of section twenty-one (21), and the north half of the northwest quarter (¼) section twenty-eight (28), and the north half (½) of the northwest quarter (¼) of section sixteen (16), and the west half (½) of the southwest quarter (¼) of section fourteen (14), and the west half (½) of *of* the east half (½) of the southwest quarter of section fourteen (14), all of the above lands being in township twenty-four (24) north, range twelve (12) east; and the west half (½) of the northeast quarter (¼), and the northwest quarter (¼) and the northeast quarter (¼), and the west half (½) of the southwest quarter (¼), and the northwest quarter of the southeast quarter (¼), all in section thirty (30), township twenty-four (24) north, range thirteen (13) east; and the west half (½) of the southeast quarter (¼), and the southwest quarter (¼)
63 of the northeast quarter (¼), and five acres off the east half (½) of the southeast quarter (¼), commencing at the ford of Dry creek and running along Montgomery road 50 rods south; thence due south, leaving grave-yard on west side of line and situated

in section nineteen (19), township twenty-four (24) north, range thirteen (13) east; also the northeast quarter of the northeast quarter (¼) of section twenty-six (26), township twenty-four (24) north, range twelve (12) east; also the north half (½) of fraction "B" (B), township twenty-four (24) north, range twelve (12) east, except seventeen (17) acres off the northwest corner and four acres for the Concord church; also the north half (½) of fractional section (25) twenty-five, township twenty-four (24) north, range 12 east, except four acres off the northeast corner; also the northeast quarter (¼) and the south half (½) of the southwest quarter (¼) of section eighteen (18), township twenty-four (24) north, range thirteen (13) east; also all the mineral and mining rights of the south half (½) of fraction "B" of section thirteen (13), and the southeast quarter of the southeast quarter
64 (¼) of section fourteen (14), and the northeast quarter (¼) of the northeast quarter (¼) of section twenty-three (23), and the northwest quarter (¼) of the southeast quarter (¼) of the northeast quarter (¼) of section twenty-three (23), all in township twenty-four (24) north, range (12) twelve east; and the northwest quarter (¼) of the southeast quarter (¼) of section eighteen (18), township twenty-four (24) north, range thirteen east, and all the mineral and mining rights on the whole of section fifteen (15), township twenty-four (24) north, range 12 east, except the northwest quarter of the northwest quarter (¼), and also the mineral and mining rights on the following-described lands in township twenty-four north, range twelve (12) east, namely, the northwest quarter of the northeast quarter (¼), and the southeast quarter of the southeast quarter (¼) of section sixteen (16), and the north half (½) of section twenty-two (22), and the northeast quarter of section twenty-one (21), and the west half (½) of the southwest quarter of section twenty-one (21); and also the following-described personal property of the party of the first part, in the county of Bibb, State of Alabama, used and employed in
65 and about the iron-ore banks, ore-washer, stock sheds, blast furnace, store, office, stock yard, blacksmith shops, carpenter shops, coking ovens, coal-washers, railway, rolling mill, nail factory, cooper shop, pattern shops, machine shops, foundry, storehouse, offices, houses, and other places owned or controlled by the party of the first part, as follows: Two locomotives, fifty railroad cars for coal, coke, & ore, forty ore cars, one hundred wheelbarrows, five hundred picks, forty drills, forty hammers, twenty mules and harness, four wagons, six sets blacksmith tools, rolling-mill, nail-factory, machine shops, foundry, and pattern-shops tools, two hundred shovels, ten carts, six sets of ropes and sheave blocks; office furniture and safes good in stores, at furnace, & Brierfield, and all the lime, stone, brick, ore, coke, coal, pig-iron, muck, bar-nail plate, merchant.; bar nails, kegs; casting, railroad iron, spikes, & track tools, moneys, bills receivable, accounts, and credits of every kind, wherever situate; and also the following personal property
66 in the county of Shelby, State of Alabama, employed in and about the coal mines and qu-rries of the party of the first part: One hundred and fifty mine-cars, eight mules and harness, two wagons, one hundred shovels, one hundred picks, fifty drills,

one hundred hammers, four hundred kegs of powder, three boxes dynamite, wire and hemp ropes, sheave wheels, oil, lamps, car wheels and axles and iron, cross-ties, railroad iron, timber, lumber, and props, two sets blacksmith tools and iron in blacksmith shop, scales, shelves, counters, and stock of goods in store, and the surplus, if any there be, from proceeds of sales of nails now held as collateral for loans in the citys of Mobile, Alabama, and Memphis, Tennessee; and also any and all articles of personal property belonging to the party of the first part that are not herein specified, including all debts of every kind due to it and all rights of action and credits of every kind; and the party of the first part will at any time, on the request of the party of the second part, furnish to him or to his successors in the trusts and conveyances in said deed hereinabove set forth, render exact inventories and
67 schedules of the property conveyed in said deed and herein more especially described, and will in like manner and on like request of said trustee or his successor in office deliver to him or them all writings, deeds, instruments, and muniments of title relating to the real and personal property described and included or intended to be included, by whatever description, in said deed of conveyance hereinabove set forth that are in the possession or under the control of the party of the first part; to have and to hold the real and personal property conveyed in said deed of trust hereinabove set forth and in this instrument more fully and specifically described to the party of the second part as trustee, and to his successors in said trust, in the same manner and to the same extent and purpose and subject to the same power therein conferred, and subject to the same agreements and covenants, and for the same purposes as are expressed in said deed of conveyances hereinabove set forth.

In witness whereof the said party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its president and attested by its secretary on this the 29th day of July, A. D. 1887.

68 [SEAL.] THOMAS J. PETER,
President of the Brierfield Coal and Iron Co. of Alabama.

Attest: E. T. PETER, *Secretary.*

Witness:
J. B. JEMISON, July 29, '87.
E. T. LENOIR, July 29, '87.

THE STATE OF ALABAMA, }
Bibb County, }

I, Fred. Pfaff, a justice of the peace in and for said State and county, hereby certify that Thomas J. Peter, whose name is signed to the foregoing conveyance as president of the Brierfield Coal and Iron Company of Alabama, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily as president of said

company and by its order and direction, and that he affixed the seal of the company thereto on the day the same bears date.

Given under my hand this twenty-ninth day of July, A. D. 1887.

FRED. PFAFF,
Justice of the Peace.

EXHIBIT B.

STATE OF ALABAMA, }
Bibb County. }

This agreement made and entered into this day between the Brierfield Coal and Iron Company, by its president, T. J. Peter, and W. D. Carter, and Kearsly Carter, Jr., witnesseth:

69 That whereas the said Brierfield Coal and Iron Company being indebted to the said William D. & Kearsley Carter, Jr., in the sum of thirteen thousand three hundred and thirty-three $\frac{33}{100}$ dollars, evidenced by its unnegotiable note, dated June 9th, 1883, the balance of the purchase-money of certain lands sold to said company by said William D. and Kearsley Carter, Jr., which said sum is now due, with six per cent. interest from date of said note: Now, in order to settle said indebedness between said parties in accordance with the terms of an agreement heretofore made by and between said parties, it is hereby agreed and stipulated as follows: That certain mortgage given by said Brierfield Coal and Iron Company to said William D. and Kearsley Carter, Jr., to secure the aforesaid note, which mortgage is now of record in the office of the probate judge of Bibb county, State of Alabama, shall remain in full effect and unsatisfied until complete payment of said indebtedness shall be fully made by said company in the manner hereinafter agreed on, following: From said indebtedness of thirteen thousand three hundred and thirty-three $\frac{33}{100}$ dollars the sum of fourteen hundred

70 dollars shall be deducted by said company & be *and be* retained by said company until the title to two hundred and eighty acres of the aforesaid lands, now claimed by the Alabama Mineral Land Company, shall be perfected and vested in said Brierfield Coal and Iron Company, upon the happening of which event the said company shall pay the said William D. & Kearsley Carter, Jr., or order, said fourteen hundred dollars, with interest from the 9th day of June, 1883; and it is agreed that from the sum remaining after said deduction of fourteen hundred dollars is made, with interest at six per cent. thereon from the 9th day of June, 1887, making the amount of fourteen thousand seven hundred and ninety-seven $\frac{33}{100}$ —, the said Brierfield Coal and Iron Company shall deduct and retain the sum of one thousand dollars until said Brierfield Coal and Iron Company shall be discharged finally from any liability arising to it from the suit of Frank Fitch, now pending in the chancery court of Bibb county, State of Alabama, upon which discharge said sum of one thousand dollars, with legal interest from the 9th day of June, 1887, shall be paid by said B. C. & I. Company to William D. & Kearsly Carter, Jr., or their

order. It is also agreed that the sum of two thousand
71 dollars shall be deducted and retained by said B. C. & I. Company from said sum of fourteen thousand seven hundred and ninety-seven $\frac{33}{100}$ dollars until the final discharge of said company as garnishee at the suit of H. C. Foucher, now pending in the chancery court of Bibb county, State of Alabama. It is further agreed that upon the happening of that event the said B. C. & I. Company shall pay to William D. and Kearsley Carter, Jr., or their order, the said sum of two thousand dollars, with legal interest from the 9th day of June, 1887. It is also agreed that the B. C. & I. Company shall deduct and retain from said sum of fourteen thousand seven hundred and ninety-seven $\frac{33}{100}$ dollars the sum of nine hundred dollars until the said B. C. & I. Company shall be finally discharged from garnishment now pending at the suit of Spencer Brothers against it in the circuit court of Bibb county, State of Alabama, upon the happening of which event the said B. C. & I. Company shall pay to said William D. and Kearsley Carter, Jr., or their order, the sum of (9) nine hundred dollars, with legal interest from the 9th day of June, 1887; and now, to settle and pay said sum of four-
teen thousand seven hundred and ninety-seven $\frac{33}{100}$ dollars
72 after the foregoing sums have been deducted and retained as hereinbefore set forth, it is hereby agreed by and between the parties hereto — the said B. C. & I. Company make and deliver to said William D. and Kearsley Carter, Jr., said company's negotiable notes, dated the 9th day of June, 1887, which is done for the extinguishment of the ten thousand eight hundred and ninety-seven $\frac{33}{100}$ dollars of said indebtedness of fourteen thousand eight hundred and ninety-seven $\frac{33}{100}$ dollars as aforesaid. Whereupon it is understood that the said note of said B. C. & I. Company for thirteen thousand three hundred and thirty-three $\frac{33}{100}$ dollars is to be surrendered and delivered up to said company, said new notes being as follows: One note for $1,000.00, payable October 20, 1887, with 8 % interest from date; one note for $1,500.00, payable November 20, 1887, with 8 % interest from date; one note for $1,500.00, payable December 20th, 1887, with 8 % interest from date; one note for $1,500.00, payable January 20, 1888, with 8 % interest from date; one note for $1,500.00, payable February 20, 1888, with 8 % interest from date; one note for $1,000.00, payable March 20, 1888, with 8 % interest from date, and one note for $897.33, payable April 20, 1888, with 8 % interest from date, leaving a balance of two thousand dollars of said ten thousand
eight hundred and ninety-seven $\frac{33}{100}$ dollars, which it is
73 agreed by said parties shall be satisfied and extinguished in the manner following, to wit:

Whereas the said T. J. Peter owns stock in the Brierfield Saw Mill and Lumber Company, a corporation, to the amount of thirty-five hundred and fifty-six $\frac{16}{100}$ dollars, which the said T. J. Peter agrees to transfer to said William D. Carter at the price of seventy dollars per share, amounting to the price of twenty-four hundred and eighty-nine $\frac{16}{100}$ dollars, two thousand of which is agreed shall be applied as aforesaid, the remainder, four hundred and eighty-nine

$\frac{31}{100}$ dollars, to be paid by said William D. Carter to said T. J. Peter in money.

In testimony whereof the said Brierfield Coal and Iron Company, by its president, T. J. Peter, and said William D. Carter and Kearsley Carter, Jr., have hereunto set their hands and seals this the 12th day of July, A. D. 1887.

BRIERFIELD COAL & IRON CO, [SEAL.]
By T. J. PETER, *President.* [SEAL.]
W. D. CARTER. [SEAL.]
K. CARTER, JR. [SEAL.]

Attest:

H. L. OLIVER.
E. T. PETER.

Filed the 28th day of October, A. D. 1887.
J. W. DIMMICK, *Clerk.*

74 *Summons.*

UNITED STATES OF AMERICA,
Middle District of Alabama.

HOLLINS, SONS & CO. and Others, Complainants,
and
THE BRIERFIELD COAL AND IRON COMPANY & Others, Defendants. } In Equity.

The President of the United States of America to The Brierfield Coal and Iron Company, a corporation under the laws of the State of Alabama; Thomas J. Peter, W. D. Carter, Kearsley Carter, Jr., Esther A. Peter, and John G. Murray, who are citizens of the State of Alabama, Greeting:

You are hereby strictly commanded and strictly enjoined that, laying all other matters aside and notwithstanding any other excuse, you and each of you personally be and appear before the judge of the circuit court of the United States for the middle district of Alabama, at the clerk's office of the said court, in the city of Montgomery, at rules to be held on the first Monday in December next, to answer a bill of complaint exhibited against you in said court by Hollins, Sons & Company and others, who are citizens of the State of Tennessee, and to do further and receive what the said court shall have considered in that behalf; and this you are not to
75 omit under the penalty on you and each of you of two hundred and fifty dollars; and have there then this writ.

To the marshal of the United States for the middle district of Alabama to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, on the 29th day [SEAL.] of October, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the one hundred and thirteenth.

J. W. DIMMICK,
Clerk U. S. Circuit Court for Mid. Dist. of Ala.

TROY, TOMPKINS & LONDON,
Complainants' Solicitor-.

NOTE.—The defendants are required and hereby notified to enter an appearance in the above-entitled cause in the clerk's office of said court on or before the rule day next ensuing, to wit, the fifth day of December, 1887, or the bill may be taken *pro confesso* against them.

J. W. DIMMICK, *Clerk.*

TROY, TOMPKINS & LONDON,
Complainants' Solicitors.

Rec'd in office this 31st day of October, 1887, and I hereby deputize —— —— to execute within writ.

A. H. KELLER,
U. S. Marshal.

The within summons served on the defendant-, The Brierfield Coal & Iron Co., John G. Merray, W. D. Carter, Thomas J. Peter, Kearsley Carter, Jr., Esther A. Peter not found, at Brierfield, 76 Alabama, on the 1 & 7 Nov., 1887, by delivering to and leaving with each a copy thereof and at the same time showing him the original, with the seal of the court attached.

Dated Nov. 7, 1887.

A. H. KELLER,
U. S. Marshal,
By R. H. WILLIAMS,
Deputy Marshal.

Returned and filed Nov. 9th, 1887.

J. W. DIMMICK, *Clerk.*

Summons.

UNITED STATES OF AMERICA,
Middle District of Alabama.

HOLLINS, SONS & COMPANY and Others, Complainants,
and
THE BRIERFIELD COAL AND IRON COMPANY & Others,
Complainants.
} In Equity.

The President of the United States of America to the City National Bank of Selma, a corporation under the laws of the United States; Commercial Bank of Selma, a corporation under the laws of the State of Alabama, who are citizens of the State of Alabama, Greeting:

You are hereby commanded and strictly enjoined that, laying all other matters aside and notwithstanding any other excuse, you and each of you personally be and appear before the judge of the circuit court of the United States for the middle district of Alabama, at the clerk's office of the said court, in the city of Montgomery, at rules to be had on the first Monday in December next, to answer a
77 bill of complaint exhibited against you in the said court by —— —— and others, who are citizens of the State of Tennessee, and to do further and receive what the said court shall have considered in that behalf; and — you are not to omit under the penalty on you and each of you of two hundred and fifty dollars; and have you there this writ.

To the marshal of the United States for the middle district of Alabama to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, on the 29th day of October, in
[SEAL.] the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the one hundred and thirteenth.

J. W. DIMMICK,
Clerk U. S. Circuit Court for Mid. Dist. of Ala.

TROY, TOMPKINS & LONDON,
Complainants' Solicitors.

NOTE.—The defendants are required and hereby notified to enter appearance in the above-entitled cause in the clerk's office of said court on or before the rule day next ensuing, to wit, the fifth day of December, 1887, or the bill may be taken *pro confess-* against them.

J. W. DIMMICK, *Clerk.*

TROY, TOMPKINS & LONDON,
Complainants' Solicitors.

Received in office this 29th day of Oct., 1887, and I hereby deputize —— —— to execute the within writ.

W. W. ALLEN,
U. S. Marshal.

78 The within summons served on the defendants, W. P. Armstrong, president of the City National Bank of Selma, and R. M. Nelson, president of the Commercial Bank of Selma, at 10.45 o'clock a. m., on the 31st day of October, 1887, by delivering to and leaving with each a copy thereof and at the same time showing each of them the original, with the saeal of court attached.

Dated October 31st, 1887.

W. W. ALLEN,
U. S. Marshal,
By L. L. GADDY,
Spc. Deputy Marshal.

Returned and filed November 1st, 1887.

J. W. DIMMICK, *Clerk.*

Summons.

UNITED STATES OF AMERICA,
Middle District of Alabama.

HOLLINS, SONS & Co. and Others, Compl'ts,
and
THE BRIERFIELD COAL AND IRON COMPANY, Defendants. } In Equity.

The President of the United States of America to Caswell C. Hucabee — J. T. Fitzgerald, who are citizens of the State of Alabama, Greeting:

You are hereby commanded and strictly enjoined that, lay- all matters aside and notwithstanding any other excuse, you and each of you personally be and appear before the judge of the circuit court of the United States for the middle district of Alabama, at
79 the clerk's office of the said court, in the city of Montgomery, at rules to be had on the first Monday in December next, to answer a bill of complaint exhibited against you in the said court by Hollins, Sons & Company and other-, who are citizens of the State of Tennessee, and to do further and to receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you and each of you of two hundred & fifty dollars; and have you there this writ.

To the marshal of the United States for the middle district of Alabama to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, on the 29th
[SEAL.] day of Oct., in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the one hundred and thirteenth.

J. W. DIMMICK,
Clerk U. S. Circuit Court for the Dist. of Ala.

TROY, TOMPKINS & LONDON,
5—1423 *Comp'ts' Sol'rs.*

NOTE.—The defendants are required and are hereby notified to enter appearance in the above-entitled cause in the clerk's office of said court on or before the rule day next ensuing, to wit, the fifth day of December, 1887, or the bill may be taken *pro confesso* against them.

J. W. DIMMICK, *Clerk.*

TROY, TOMPKINS & LONDON,
Comp'ts' Solicitors.

80 Received in office this 29th day of Oct., 1887, and I hereby deputize —— —— to execute the within writ.

W. W. ALLEN,
U. S. Marshal.

The within summons served on the defendants by handing copies to each of them October 31, 1887—C. C. Huckabee, J. T. Fitzgerald.

W. W. ALLEN,
U. S. Marshal,
By L. C. LITESEY,
Dep'ty Marshal.

Returned and filed Nov. 1st, 1887.

J. W. DIMMICK, *Clerk.*

Summons.

UNITED STATES OF AMERICA, *Middle District of Alabama.*

HOLLINS, SONS & COMPANY, Complainants,
and
THE BRIERFIELD COAL & IRON COMPANY and Others, Defendants.
} In Equity.

The President of the United States of America to the Alabama National Bank, a corporation under the laws of the United States, who is a citizen of the State of Alabama, Greeting:

You are hereby commanded and strictly enjoined that, laying all matters aside and notwithstanding any other excuse, you personally be and appear before the judge of the circuit court of the United States for the middle district of Alabama, at the clerk's office of the said court, in the city of Montgomery, at rules to be had on
81 the first Monday in December next, to answer a bill of complaint exhibited against you in the said court by Hollins, Sons & Company and others, who are citizens of the State of Tennessee, and to do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you of two hundred and fifty dollars; and have you then and there this writ.

To the marshal of the United States for the middle district of Alabama to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme

Court of the United States, on the 29th day of October, in
[SEAL.] the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the one hundred and thirteenth.

J. W. DIMMICK,
Clerk U. S. Circuit Court for the Mid. Dis. of Ala.

TROY, TOMPKINS & LONDON,
Complainants' Solicitors.

NOTE.—The defendants are required and hereby notified to enter appearance in the above-entitled cause in the clerk's office of said court on or before the rule day next ensuing, to wit, the *the* fifth day of December, 1887, or the bill may be taken *pro confesso* against them.

J. W. DIMMICK, *Clerk.*

TROY, TOMPKINS & LONDON,
Complainants' Solicitors.

82 Received in office this 31st day of October, 1887, and I hereby deputize —— —— to execute the within writ.

A. H. KELLER,
U. S. Marshal.

The within summons served on the defendant, Joe F. Johnson, president, at Birmingham, on the 1st day of Nov., 1887, by delivering to and leaving with him a copy thereof and at the same time showing him the original, with the seal of the court attached.

Dated Nov. 1st, 1887.

A. H. KELLER,
U. S. Marshal,
By R. H. MILAM,
Dep'ty Marshal.

Summons.

UNITED STATES OF AMERICA,
Middle District of Alabama.

HOLLINS, SONS & COMPANY and Others, Complainants,
and
THE BRIERFIELD COAL AND IRON COMPANY & Others, Defendants.
} In Equity.

To the President of the United States of America to Robert McCalley, who is a citizen of the State of Alabama, Greeting:

You are hereby commanded and strictly enjoined that, laying all other matters aside and notwithstanding any other excuse, you personally be and appear before the judge of the circuit court of
83 the United States for the middle district of Alabama, at the clerk's office of the said court, in the city of Montgomery, at rules to be had on the first Monday in December next, to answer a

bill of complaint exhibited against you in the said court by —— —— and others, who are citizens of the State of Tennessee, to do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you of two hundred dollars; and have you then and there this writ.

To the marshal of the United States for the middle district of Alabama to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, on the 29th day of October, in the year of our Lord one thousand eight hundred and eighty-seven, and of the independence of the United States of America the one hundred and thirteenth.

J. W. DIMMICK,
Clerk U. S. Circuit Court for the Mid. Dist. of Ala.

TROY, TOMPKINS & LONDON,
Complainants' Sol's.

NOTE.—The defendants are required and hereby notified to enter appearance in the above-entitled cause in the clerk's office of said court on or before the rule day next ensuing, to wit, the fifth day of December, 1887, or the bill may be taken *pro confesso* against them.

J. W. DIMMICK, *Clerk.*

TROY, TOMPKINS & LONDON,
Comp'ts' Sol's.

84 Received in office this 31st day of Oct., 1887, and I hereby deputize ——- — to execute this writ.

A. H. KELLER,
U. S. Marshal.

The within summons not served on the defendant. After diligent search I was not able to find Robert McCalley.

Dated Dec. 2d, 1887.

A. H. KELLER,
U. S. Marshal,
By A. O. STEWART,
Deputy Marshal,

Returned and filed Dec'r 6th, 1887.

J. W. DIMMICK, *Clerk.*

85 *Order of Publication.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

HOLLINS, SONS AND CO. and Others
vs.
BRIERFIELD COAL AND IRON COMPANY and Others. } 107.

Now come the solicitors of complainants and move the court for an order of publication to the said Prestom B. Plumb, Carrie S.

Plumb, Justin S. Morrill, George I. Seney, Calvin S. Brice, Samuel Thomas, M. S. Pomeroy, and Laura E. Williams, the non-resident defendants mentioned in the said bill; and it appearing to the court that the said Preston B. Plumb and Carrie S. Plumb reside at Emporia, in the State of Kansas, and the said Justin S. Morrill resides at Strafford, in the State of Vermont, and the said George I. Seeney, Calvin S. Brice, and Samuel Thomas each reside in the city and State of New York, and said Laura E. Williams resides at Cincinnati, in the State of Ohio, and M. S. Pomeroy resides at Washington, in the District of Columbia, and the personal service upon them is not practicable:

86 It is therefore ordered and decred by the court that the clerk do forthwith make publication to each of them in the Daily Dispatch, a public newspaper published in the city of Montgomery, Alabama, once a week for six consecutive weeks, requiring each of them to appear, plead, answer, or demur to the bill of complaint in this cause within thirty days after said period of six weeks shall expire, or that at the next rule day after said period of thirty days shall expire a decree *pro confesso* will be rendered against each of them upon said bill of complaint and all the allegations of said bill of complaint as against them be taken as confessed.

And the clerk of this court will mail to each of them one copy of said newspaper containing said order of publication, properly directed to each of them at their places of residence aforesaid, postage prepaid, marking said notice of publication with ink so as to call the attention of said above-named defendants thereto.

JOHN BRUCE, *Judge.*

October 30th, 1887.

Filed Nov. 1, 1887.

J. W. DIMMICK, *Clerk.*

87 *Notice of Motion for Injunction and Receiver.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

HOLLINS, SONS & CO. *et als.*
vs.
BRIERFIELD COAL & IRON CO. *et als.* } 107.

To the Brierfield Coal and Iron Company and P. B. Plumb, trustee, and John G. Murray:

You will please take notice that on Wednesday next, the 14th inst., or as soon thereafter as the motion can be heard, we shall move the court in the above-entitled cause to issue the injunction and appoint a receiver, as prayed in the original bill on file herein.

TROY, TOMPKINS & LONDON,
Sol's for Complainant-.

STATE OF ALABAMA, }
Shelby County. }

Before me, Geo. T. Harrison, a justice of the peace in and for said county and State, personally appeared C. C. Wells, who is known to me, who deposes and says that he delivered copies of the above notice to John G. Murray, secretary of the Brierfield Coal and Iron Company, John G. Murray, and John G. Murray, agent of P. B. Plumb, trustee, this 14th day of November, 1887.

C. C. WELLS.

Sworn to and subscribed before me this 14th day of Nov., 1887.

GEO. T. HARRISON, *J. P.*

88 *Order Setting Down Motion of Complainants for Receiver, &c.*

HOLLINS, SONS & CO.
vs.
BRIERFIELD COAL & IRON COMPANY *et als.* } 107.

In the above-entitled cause the motion of complainants for a receiver is set down, on motion of Troy, Tompkins & London, sol's for complainants, for hearing on Monday, December 12th, at 10 o'clock, and the respective parties are required to furnish to the opposing counsel the affidavits or other proofs upon which they will rely in support of or against the motion at least one day before the same is to be heard. Three days' notice of this order will be given solicitors who have appeared for the defendants or any of them.

This 26th day of November, 1887.

JOHN BRUCE, *Judge.*

Rec'd in office Dec. 9, 1887.

W. W. ALLEN, *U. S. Mar.*

Ex. Nov. 9, 1887, by serving same on W. S. Thorington, of the firm of Thorington & Smith.

W. W. ALLEN, *U. S. Mar.*

Ret'd & filed Dec. 9, '87.

J. W. DIMMICK, *Clerk.*

Answer of the City National Bank of Selma.

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

HOLLINS, SONS & CO. & Others, Complainants,
vs.
THE BRIERFIELD COAL & IRON COMPANY & Other-. } 107.

The separate answer of The City National Bank of Selma, one
89 of the defendants, to the bill of complaint of R. S. Hollins, Sr., R. S. Hollins, Jr., John Dickinson, and John A. Hollins, trading as copartners under the firm name of Hollins, Sons & Co., and others, complainants.

This defendant, saving and reserving to itself all right and benefit of exception to the said bill of complaint, for answer thereto or to so much and such parts thereof as this defendant is advised it is material to answer, says:

SECTION 1. That this defendant does not know and is not informed, except by the bill of complaint, and cannot state whether or no the said Brierfield Coal & Iron Company is indebted to the complainants or either of them in the amounts as alleged in the said bill of complaint or in any other amount.

SECTION 2. That this defendant is informed and believes and states that on or about the 4th day of May, A. D. 1882, the said Brierfield Coal and Iron Company became and was duly organized and incorporated in and by that corporate name and with a capital stock of $750,000.00, under and in accordance with the statutes of the State of Alabama, set forth and contained in article first, chapter first, title first, and part second of the Code of Laws of said
90 State, made and provided for the creation of manufacturing, mining, and industrial business corporations, and became and was invested with all the rights, powers, franchises, and privileges conferred by law on corporations of that class, and became and was domiciled and had its office and principal place of business at Brierfield, in the county of Bibb, in this State; and that afterwards, by virtue of an act of the General Assembly of Alabama entitled An act to amend and ratify the charter of the Brierfield Coal and Iron Company of Bibb county, Alabama, approved December 12, 1884, the charter of said corporation was amended and ratified accordingly.

SECTION 3. And this defendant is informed and believes and so states that, in pursuance of a call in that behalf duly made and after and in pursuance of more than thirty days' notice of time and place and purposes thereof, duly given by publication in a newspaper of general circulation published in the said county of Bibb, & in accordance with all the requirements of law in such cases, the stockholders of said Brierfield Coal and Iron Company met and

assembled in general convention at the office of said com-
91 pany, at Brierfield, Alabama, on the 1st day of September, A. D. 1882, for the purpose of considering and acting upon the proposition to authorize the creation of a bonded indebtedness of said company to the extent of $500,000.00 and the execution of a proper mortgage deed of trust on the property, real and personal, of said company to secure the payment of such bonded indebtedness.

That at said convention all the stockholders of said company were present, in person or by proxy, and all the stock thereof was duly represented, and that said stockholders' convention by vote and resolution thereof, duly and unanimously adopted, then and there authorized and directed the creation of said bonded indebtedness and the making and execution of said mortgage deed of trust, of the date, tenor, and effect hereinafter designated.

That on the said 1st day of September, 1882, the said Brierfield Coal and Iron Company duly executed the mortgage deed of trust to Preston B. Plumb, as trustee, in the bill of complaint referred to and described, in pursuance of the power and authority in it in that behalf vested by law and by the direction and authority aforesaid of its stockholders in general convention assembled, and also by authority of the board of directors of said company, duly given
92 by a resolution of said board authorizing the president of said company, for and on behalf of the same, to execute that identical mortgage deed of trust, which was then and there copied and set out in full on the minutes of the proceedings of said board.

That the corporate name of said Brierfield Coal and Iron Company was subscribed to said mortgage deed of trust in execution thereof by Thomas J. Peter as and who then was the president thereof, and the common seal of said corporation was attached thereto, and attested by John G. Murray as and who then was the secretary thereof, and the said mortgage deed of trust was duly subscribed by the said Preston B. Plumb as trustee, who thereby accepted the trusts therein and thereby conveyed and created.

That the execution of said mortgage deed of trust was duly acknowledged by said company, by and through the said Thomas J. Peter, the president thereof, in said Bibb county, before Jesse W. Mahon, who was then and there a justice of the peace in and for said county, and who duly certified the acknowledgement thereof on the 27th day of September, 1882; that said mortgage deed of trust was shortly after the execution thereof duly recorded in the
93 counties respectively of Bibb, Chilton, and Shelby, as appears by the copy thereto attached to the said bill of complaint and marked *to* Exhibit "A," and that said "Exhibit A" sets forth and contains a substantial copy of the said mortgage deed of trust.

SECTION 4. That in pursuance of the direction and authority aforesaid of the creation of such bonded indebtedness of said company and under and in accordance with said mortgage deed of trust the said Brierfield Coal and Iron Company afterwards duly executed, sold, and delivered sundry of its first-mortgage commercial bonds, each of the denomination of $1,000.00, each bearing date the 1st day of October, 1882, each payable to the said trustee or bearer, at the

office of said company, in the city and State of New York, on the 1st day of October, A. D. 1912, with the proper interest coupons attached to each for the payment of the semi-annual interest thereon, at the rate of six per cent. per annum, and each duly authenticated by the certificate of the said trustee endorsed thereon, and each of the form and tenor and effect more particularly set forth and prescribed in and by said mortgage deed of trust; but this defendant does not know and is not informed and cannot state the number of said bonds so issued, nor the persons to whom nor the circumstances
94 under which the same were issued, except as hereinafter stated and set forth.

SECTION 5. And this defendant is informed and believes and so states that afterwards and in accordance with the provision of said original mortgage deed of trust, for further assurances in the premises, the said Brierfield Coal and Iron Company, on, to wit, the 29th day of July, 1887, for the purpose of further securing the payment of the 500 bonds in the said original mortgage deed of trust mentioned, executed and delivered to the said Preston B. Plumb, as trustee, another mortgage deed of trust, bearing date the 29th day of July, 1887; that the said last-mentioned deed of trust was duly authorized by the board of directors of said company, in and by a resolution of said board duly adopted at a regular meeting thereof and entered in the minutes of the proceedings of said board, and the same was duly executed by said company by and through Thomas J. Peter as and who was then the president thereof, and the common seal of said corporation was thereunto attached and duly attested by the secretary thereof, and the execution of said deed of trust was also duly attested by two subscribing witnesses, and the same was shortly afterwards probated and duly recorded in the said counties
95 respectively of Bibb, Chilton, and Shelby (wherein was and is situated the property, real and personal, thereby granted and conveyed), as appears in and by the copy of said last-mentioned mortgage deed of trust attached to the bill of complaint, marked "Exhibit A," and that said "Exhibit A" sets forth and contains a substantial copy of said last-named mortgage deed of trust.

SECTION 6. And this defendant is informed and believes and so states that on, to wit, the first day of August, 1887, the said Preston B. Plumb, as such trustee, under and in accordance with the terms and provisions in said mortgage deed of trust in that behalf contained, and on account of the defaults of the said Brierfield Coal and Iron Company in the premises, demanded possession of all the property, real and personal, included in or covered by said mortgage deed of trust or either of them, and that on, to wit, the 2d day of August, 1887, the said Plumb, as such trustee, with the consent of said company, took actual possession of all said property, real and personal, and has since held possession of said property, and so had possession of said property when this bill was filed, as such trustee, under and by virtue of said mortgage deeds of trust.
96 And this defendant is advised by counsel and believes and avers that by reason of the premises and the terms, provisions, operations, and effect of the said mortgage deeds of trust all of

the property of said Brierfield Coal and Iron Company, real and personal, both that owned by it at the date of said original mortgage deed of trust and that since acquired, including choses in action, rights, franchises, and credits, balances due on unpaid subscriptions to capital stock, and all items and things whatever of value, is granted, conveyed, and pledged to said trustee and his successor or successors in trust as a trust fund to secure the payment of said first-mortgage bonds according to the tenor and effect thereof.

SECTION 7. That at the time of the filing of said bill of complaint this defendant was and still is the *bona fide* purchaser and holder for value of twenty-eight (28) of said first-mortgage bonds of said Brierfield Coal and Iron Company, all duly executed and authenticated and, as this defendant is informed and believes, all of which had been duly issued and negotiated by said company for full value, the said numbers of which said bonds are, respectively, as follows:

97 Bonds numbered 208, 209, 210, 211, 212, 213, 214, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, and 433; that this defendant became the purchaser and holder of the said twenty-eight (28) bonds to secure the payment of the following-described notes, which were each drawn by said Brierfield Coal and Iron Company and endorsed by said Thomas J. Peters, said notes being each payable at the said City National Bank of Selma and payable at the times and for the amounts following, to wit:

One note for $2,000.00, due August 15th, 1887.
One note for $5,000.00, due August 28th, 1887.
One note for $3,500.00, due October 11th, 1887.
One note for $3,500.00, due January 5th, 1888.

SECTION 8. That, as this defendant is informed and believes, each and all of said bonds above described so held by this defendant had originally been issued, sold, and negotiated by said Brierfield Coal and Iron Company for full value to other parties than this defendant; and this defendant avers and states that it afterwards acquired and became the purchasers of each of said bonds so

98 held by this defendant in good faith and in the usual and regular course of business for a then present valuable consideration paid and furnished by this defendant—that is to say, money loaned as aforesaid by this defendant to the said Brierfield Coal and Iron Company and the said Thomas J. Peter, respectively, on the faith and security of said bonds at the dates respectively of the delivery of said bonds to this defendant, and without any knowledge, information, or notice of any of the matters or things in said bill of complaint alleged against said bonds or said mortgage deeds of trust or either of them, and without any knowledge, information, or notice of any defence to said bonds or any of them, in whole or in part, if any such there be, or any invalidity, defect, or infirmity whatsoever, at law or in equity, in said bonds or any of them, or in the title thereto of the previous holders, if any such there be.

And this defendant alleges and avers that for the payment of said bonds so held by this defendant, according to the tenor and effect

thereof, this defendant is invested with a first lien upon all the property of the Brierfield Coal and Iron Company of every kind and description, real and personal, including rights, credits,
99 choses in action, corporate franchises, and any and all amounts and balances due from its stockholders on account of unpaid subscriptions to the capital stock thereof, prior and superior to any and all other rights thereto and liens thereon whatsoever, except the rights and liens of holders of other bonds of the same issue, who are *bona fide* purchasers thereof for a valuable consideration, if such there be, and except such liens for purchase-money, if any there be, as may have been reserved by the vendors of particular property purchased by said Brierfield Coal and Iron Company.

SECTION 9. And this defendant, on advice of counsel, information, and belief, for further answer to said bill of complaint, says as follows:

This defendant denies that said bonds so held by this defendant as aforesaid or any of them were issued by said Brierfield Coal and Iron Company to any of its stockholders without consideration or for much less than the face or nominal value thereof, as alleged in said bill, and avers that on the contrary thereof said bonds held by this defendant, and each of them, were issued and negotiated by said company for full and valuable consideration.

And denies that said bonds so held by this defendant or
100 the said mortgage deeds of trust or either of them are fraudulent and void or fraudulent and void as against the complain-t in said bill or other creditors of said company or any other person, and avers that said bonds and the said mortgage deeds of trust are each and all valid, binding, and operative according to their tenor and effect respectively to all intents and purposes.

And denies that it required the vote of two-thirds in value of the stock of said Brierfield Coal and Iron Company to authorize the execution of said mortgage deeds of trust, as in said bill alleged, and avers that under the statutes governing the class of corporations to which said company belongs a majority in value of said stock at most was sufficient to authorize the execution thereof.

And says it is not true, as alleged in said bill, that the notice of the meeting of the stockholders of said company required by law to authorize the execution of said original mortgage deed of trust was not given, and avers that due notice for over thirty days of the time, place, and purposes of said meeting was given in all respects as prescribed by law in such cases.

And says it is not true, as alleged in said bill, that not two-thirds in value of the stock of said corporation voted to au-
101 thorize the execution of said mortgage deed of trust, and avers the contrary thereof, and that, though the vote of a majority in value of said stock would be sufficient therefor, as a matter of fact the said stockholders' convention by the unanimous vote of the entire stock of said corporation, all of which was then and there present, represented, and voted, authorized and directed the creation

of said bonded indebtedness and the execution of said mortgage deed of trust.

And this defendant denies that the complainants are entitled to have the unpaid subscriptions to capital stock in the bill mentioned and described applied to the payment of their claims in priority to or on an equality with the claims of this defendant, and avers that the rights and liens of this defendant and other holders of said bonds in like situation, if any there be, upon said balances, as on all other property of said company, are paramount to any rights of the complainants in the premises.

And this defendant is advised by counsel and believes and states and charges that at the time of the creation of said bonded debt and the execution of said mortgage deeds of trust the said Brier-
102 field Coal and Iron Company, under and by virtue of its charter and the laws of this State, possessed and was invested with the power to make, issue, and sell said bonds and to execute said mortgage deeds of trust to secure the payment thereof, and that said company, by and through its constituted officers and agents, exercised that power, and that the bonds so issued and secured became and were and are commercial paper and entitled to the faith and credit and clothed with the immunities attached by the law of the land to such paper, and that the rights and title of this defendant as the *bona fide* purchaser for value and without notice of said bonds so held by this defendant are and remain wholly unaffected by any defects or irregularities, whether of act or omission, of said officers and agents in or about the exercise of the power aforesaid, if any such defects or irregularities in fact there were.

And now, having fully answered said bill of complaint, this defendant prays hence to be dismissed with its reasonable costs in this behalf expended.

PETTUS & PETTUS,
Sol's for Defendant.

THE STATE OF ALABAMA, }
Dallas County. }

Before me, William P. Parrish, a notary public in and for the county and State aforesaid, this day personally appeared Albert G. Parrish, who, having been by me first duly sworn, on oath says that he is the cashier of the City National Bank of Selma, a corporation, and is duly authorized to make the foregoing answer for and on behalf of said bank; that the matters and things therein stated when stated as of the knowledge of the defendant are true and when stated on advice, information, and belief he believes them to be true.

A. G. PARRISH.

Sworn to and subscribed before me this 28th day of November, 1887.

W. P. PARRISH,
Notary Public, Dallas County.

Filed the 29th day of Nov., 1887.

J. W. DIMMICK, *Clerk.*

103 *Answer of Commercial Bank of Selma.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & Co., Complainants,
vs.
THE BRIERFIELD COAL & IRON COMPANY, Defendants. } In Equity. 107.

The separate answer of The Commercial Bank of Selma, a corporation and one of the defendants, to the bill of complaint of R. S. Hollins, Sr., R. S. Hollins, Jr., John Dickinson, and John A. Hollins, trading as copartners, trading under the firm name of Hollins, Sons & Co., and others, complainants.

This defendant, saving and reserving to itself all right and benefit of exceptions to the said bill of complaint, for answer thereto or to so much and such parts thereof as it is advised it is material for it to answer, says:

SECTION 1. That this defendant does not know and is not informed, except by the bill of complaint, and cannot state whether or no the said Brierfield Coal and Iron Company is indebted to the complainants or either of them in the amounts as alleged in the said bill of complaint or in any other amounts.

SECTION 2. That this defendant is informed and believes
104 and states that on or about the 4th day of May, A. D. 1882, the said Brierfield Coal and Iron Company became and was duly organized and incorporated in and by that corporate name, and with a capital stock of $750,000.00, under and in accordance with the statutes of the State of Alabama set forth and contained in article first, chapter first, title first, and part second of the code of laws of said State made and provided for the creation of "manufacturing, mining, and industrial business corporations," and became and was invested with all the rights, powers, franchises, and privileges conferred by law on corporations of that class, and became and was domiciled and had its office and principal place of business at Brierfield, in the county of Bibb, in this State; and that afterwards, by virtue of an act of the General Assembly of Alabama, entitled "An act to amend and ratify the charter of the Brierfield Coal and Iron Company, of Bibb county, Alabama," approved December 12th, 1884, the charter of said corporation was amended and ratified accordingly.

SECTION 3. And this defendant is informed and believes and so states that in pursuance of call and in that behalf duly made,
105 and after and in pursuance of more than thirty days' notice of the time and place and purpose thereof, duly given by publication in a newspaper of general circulation, published in the said county of Bibb, and in accordance with all the requirements of law in such cases the stockholders of said Brierfield Coal and Iron

Company met and assembled in general convention, at the office of said company, at Brierfield, Alabama, on the 1st day of September, A. D. 1882, for the purpose of considering and acting upon the proposition to authorize the creation of a bonded indebtedness of said company to the extent of $500,000.00, and the execution of the proper mortgage deed of trust on the property, real and personal, of said company to secure the payment of such bonded indebtedness; that at said convention all the stockholders of said company were present in person or by proxy and all the stock thereof was duly represented, and at said stockholders' convention by the vote and resolution thereof, duly and unanimously adopted, then and there authorized and directed the creation of said bonded indebtedness and the making and execution of said mortgage deed of trust of the date & tenor and effect hereinafter designated.

106 Then on the said first day of September, 1882, the said Brierfield Coal and Iron Company duly executed the mortgage deed of trust to Preston B. Plumb, as trustee, in the bill of complaint referred to and described, in pursuance of the power and authority in it in that behalf vested by law, and by the direction and authority aforesaid of its stockholders in general convention assembled, and also by authority of the board of directors of said company, duly given by a resolution of said board authorizing the president of said company, for and on behalf of the same, to execute that identical mortgage deed of trust, which was then and there copied and set out in full on the minutes of the proceedings of said board.

That the corporate name of said Brierfield Coal and Iron Company was subscribed to said mortgage deed of trust in execution thereof by Thomas J. Peter, as and who then was the president thereof, and the common seal of said corporation was attached thereto and attested by John G. Murray, as and who then was the secretary thereof, and the said mortgage deed of trust was also duly subscribed by the said Preston B. Plumb, as trustee,

107 who thereby accepted the trust therein and thereby created; that the execution of said mortgage deed of trust was duly acknowledged by said company by and through the said Thos. J. Peter, the president thereof, in said Bibb county, before Jesse W. Mahon, who was then and there a justice of the peace in and for said county and who duly certified the acknowledgement thereof on the 27th day of September, 1882; that said mortgage deed of trust was shortly after the execution thereof duly recorded in the counties, respectively, of Bibb, Chilton, and Shelby, as appears by the copy thereof attached to the said bill of complaint and marked "Exhibit A," and that said "Exhibit A" sets forth and contains a substantial copy of the said mortgage deed of trust.

SECTION 4. That in pursuance of the direction and authority aforesaid for the creation of such bonded indebtedness of said company and under and in accordance with the terms and provisions of said mortgage deed of trust the said Brierfield Coal and Iron Company afterward duly executed, sold, and delivered sundry of its first-

mortgag- commercial bonds, each of the denomination of
108 $1,000.00, each bearing date the first day of October, 1882, each payable to the said trustee, or be-rer, at the office of the said company, in the city and State — New York, on the first day of October, A. D. 1912, with the proper interest coupons attached to each for the payment of the semi-annual interest thereon at the rate of six per centum per annum, and each duly authenticated by the certificate of the said trustee endorsed thereon, and each of the form and tenor and effect more particularly set forth and prescribed in and by said mortgage deed of trust; that this defendant does not know and is not informed and cannot state the number of said bonds so issued and the persons to whom nor the circumstances under which the same were issued, except as hereinafter stated and set forth.

SECTION 5. And this defendant is informed, believes, and so states that afterwards and in accordance with the provisions of said original mortgage deed of trust, for further assurances in the premises, the said Brierfield Coal and Iron Company on, to wit, the 29th day of July, 1887, for the purpose of further securing the payment of the 500 bonds in the said original mortgage deed of trust mentioned, executed and delivered to said Preston B. Plumb, as trustee, another mortgage deed of trust, bearing date the 29th day
109 of July, 1887; that the said last-mentioned deed of trust was duly authorized by the board of directors of said company in and by a resolution of said board, duly adopted at a regular meeting thereof and entered in the minutes of the proceedings of said board, and the same was duly executed by said company by and through Thomas J. Peter, as and who then was the president thereof, and the common seal of said corporation was thereto attached and duly attested by the secretary thereof, and the execution of said deed of trust was also duly attested by two subscribing witnesses thereto, and the same was shortly afterwards probated and duly recorded in the said counties respectively of Bibb, Chilton, and Shelby, wherein was and is situate the property, real and personal, thereby granted and conveyed, as appears in and by the copy of said last-mentioned mortgage deed of trust attached to the bill of complaint marked "Exhibit A," and that said "Exhibit A" sets forth and contains a substantial copy of said last-named mortgage deed of trust.

SECTION 6. And this defendant is informed and believes and so states that on, to wit, the 1st day of August, 1887, the said Preston B. Plumb, as such trustee, under and in accordance with the
110 terms and provisions in said mortgage deed of trust in that behalf contained, and on account of the defaults of the said Brierfield Coal and Iron Company in the premises, demanded possession of all the property, real and personal, included in or covered by said mortgage deeds of trust or either of them, and that on, to wit, the 2d day of August, 1887, the said Plumb, as such trustee, with the consent of said company, took actual possession of all of said property, real and personal, and has ever since held and still holds possession thereof as such trustee under and by virtue of said mortgage deeds of trust.

And this defendant is advised by counsel and believes and avers that by reason of the premises and the terms, provisions, operation, and effect of the said mortgage deeds of trust all of the property of said Brierfield Coal and Iron Company, real and personal, both that owned by it at the date of the said original mortgage deed of trust and that since acquired, including choses in action, rights, franchises, and credits, balances due on unpaid subscriptions to capital stock, and all items and things whatsoever of value, is granted, conveyed, and pledged to said trustee and his successor or successors in the trust as a trust fund to secure the payment of said first-mortgage bonds, according to the tenor and effect thereof.

111 SECTION 7. That at the time of the filing of said — of complaint this defendant was and it still is the *bona fide* purchaser and holder for value of thirty (30) of said first-mortgage bonds of the Brierfield Coal and Iron Company, hereinabove described, all duly executed and authenticated, and, as this defendant is informed and believes, all of which had theretofore been duly issued and negotiated by said company for full value. The serial numbers whereof are respectively as follows: Bonds No. 195, 196, 197, 198, 199, 200, 201, 202, 203, 235, 236, 237, 238, 239, 240 (371, 372, 373), 434, 435, 436, 443, 444, 445, 453, 454, 455, 456, 457, 458. That this defendant became the purchaser and holder of the said thirty-one bonds as aforesaid to secure the payment of the following-designated sums of money loaned by this defendant to the following-named parties on the faith of said bonds as such security, which were transferred and delivered to this defendant to secure the payment of said loans at the times respectively when said loans were made—namely:

(1.) The certain indebtedness of said Brierfield Coal and Iron Company and said Thomas J. Peter to this defendant for money so loaned them, aggregating the sum of twenty-two thousand and five hundred dollars, $22,500.00, and evidenced by the several prom-

112 i-sory notes made jointly by said company and said Peter to this defendant, bearing different dates from, to wit, February 12th, 1887, to July 28, 1887, and maturing at different times from, to wit, August 15, 1887, to January 31, 1888, which said indebtedness of $22,500.00, with interest thereon, remains due and wholly unpaid; and to secure the payment whereof twenty-seven (27) of said bonds were transferred and delivered to this defendant as aforesaid and are specifically pledged, namely: Bonds No. 195, 196, 197, 198, 199, 200, 201, 202, 203, 235, 236, 237, 238, 239, 240, 434, 435, 436, 443, 444, 445, 453, 454, 455, 456, 457, and 458.

(2.) The certain other indebtedness of said Brierfield Coal and Iron Company and said Thomas J. Peter and John G. Murray to this defendant for money so loaned them amounting to the sum of $2,500.00, and evidenced by the certain promissory note of said company for $2,500.00 and endorsed by said Peter and Murray to this defendant, bearing date, to wit, the 18th of March, 1887, and payable on the 21st day of September, 1887, which said indebtedness of $2,500.00, with interest thereon, remains due and wholly unpaid; and to secure the payment whereof three (3) of said bonds were

transferred and delivered to this defendant as aforesaid and are specifically pledged, namely: Bonds No. 371, 372, and 373.

113 That by the terms of said transfers, hypothecation, and pledges of said bonds expressed in writing in each case the same were made liable, and this defendant avers that they are liable, to secure the payment not only of the particular debt or debts for which the same were specifically pledged as aforesaid, but also for the payment of any and all further or other debts and liabilities of the pledgers respectively to this defendant, whether as principal or surety.

SECTION 8. That, as this defendant is informed and believes, it is provided in and by said original deed of trust and set forth in the face of said bonds that said bonds may be registered on the books of said Brierfield Coal and Iron Company and be made thereby payable to a named and designated individual and transferable only on the books of said company, and that said bonds so registered in the name of an individual may be afterwards again registered, and be made thereby payable to bearer and transferrable and negotiable by delivery; that of the above-described thirty (30) bonds so held by this defendant twelve (12) of them were never so registered, but remained payable to bearer, namely, bonds Nos. 434, 435, 436, 443, 444, 445, 453, 454, 455, 456, 457, and 458; and the following eighteen (18) of them were so registered and made payable to certain individuals, and were afterwards, and before this defendant acquired the

114 same, again registered and thereby again made payable to bearer, namely, bonds Nos. 195, 196, 197, 198, 199, 200, 201, 202, 203, 235, 236, 237, 238, 239, 240, 371, 372, and 373, so that each and all of the above-designated thirty (30) bonds were at the time this defendant purchased the same commercial bonds payable to bearer and transferable and negotiable by delivery.

SECTION 9. That, as this defendant is informed and believes, each and all of said thirty (30) bonds above described had originally been duly issued, sold, and negotiated by said Brierfield Coal and Iron Company for full value to other parties than this defendant; and this defendant avers and states that it afterwards acquired and became the purchaser of each of said thirty (30) bonds, in good faith and in the usual and regular course of business, for a then present valuable consideration paid and furnished by this defendant—that is to say, moneys loaned as aforesaid by this defendant to the said Brierfield Coal and Iron Company; and the said Thomas J. Peter and said John G. Murray, respectively, on the faith and security of said bonds, at the dates respectively of the delivery of said bonds to this defendant, and without any knowledge, information, or notice of any of the matters or things in said bill of complaint alleged against said bonds or said mortgage deeds of trust, or either of them,

115 and without any knowledge, information, or notice of any defence to said bonds or any of them, in whole or in part, if any such there be, or of any invalidity, defect, or infirmity whatsoever, at law or in equity, in said bonds or any of them or in the title thereto of the previous holders, if any such there be.

And this defendant alleges and avers that for the payment of said

thirty (30) bonds, according to the tenor and effect thereof, this defendant is invested with a first lien upon all the property of the said Brierfield Coal and Iron Company of every kind and description, real and personal, including rights, credits, choses in action, corporate franchises, and any and all amounts and balances due from its stockholders on account of unpaid indebtedness to the capital stock thereof prior and superior to any and all other rights thereto and liens thereon whatsoever, except the rights and liens of holders of other bonds of the same issue who are *bona fide* purchasers thereof for a valuable consideration, if such there be, and except such liens for purchase-money, if any there be, as may have been reserved by the vendors of particular property purchased by said Brierfield Coal and Iron Company.

116 SECTION 10. And this defendant, on advice of counsel, information, and belief, for further answer to said bill of complaint, says as follows:

This defendant denies that the said thirty bonds so held by it as aforesaid or any of them were issued by said Brierfield Coal and Iron Company to any of its stockholders without consideration or for much less than the face or nominal value thereof, as alleged in said bill, and avers that on the contrary thereof said 31 bonds and each of them were issued and negotiated by said company for full and valuable consideration.

And denies that said thirty (30) bonds or the said mortgage deeds of trust or either or any of them are fraudulent and void or fraudulent or void as against the complainants in said bill or other creditors of said company or any other person, and avers that said 30 bonds and the said mortgage deed of trust are each and all valid, binding, and operative, according to their tenor and effect, respectively, to all intents and purposes.

And denies that it required the vote of two-thirds in value of the stock of said Brierfield Coal and Iron Company to authorize the execution of said mortgage deeds of trust, as in said bill

117 alleged, and avers that under the statute governing the class of corporations to which said company belongs a majority in value of said stock, at most, was sufficient to authorize the execution thereof; and says it is not true, as alleged in said bill, that the notice of the meeting of the stockholders of said company required by law to authorize the execution of said original mortgage deed of trust was not given, and avers that due notice for over thirty days of the time, place, and purpose of said meeting was given in all respects as prescribed by law in such cases; and now says it is not true, as alleged in said bill, that not two-thirds in value of the stock of said corporation voted to authorize the execution of said mortgage deed of trust, and avers that, on the contrary thereof, though the vote of a majority in value of said stock would have been sufficient therefor, and as a matter of fact the said convention, by the unanimous vote of the entire stock of said corporation, all of which was then and there present, represented, and voted, authorized and directed the creation of said bonded indebtedness and the execution of said mortgage deeds of trust.

And this defendant denies that the complainants are
118 entitled to have the unpaid subscription to capital stock in the bill mentioned and described applied to the payment of their claims in priority to or on equality with the claims of this defendant, and avers that the rights and liens of this defendant and other holders of said bonds in like situation, if any there be, upon said balances, as upon all other property of said company, are paramount to any rights of the complainant in the premises; and this defendant is advised by counsel and believes and *and* states and charges that at the time of the creation of said bonded debt and the execution of said mortgage deeds of trust the said Brierfield Coal and Iron Company, under and by virtue of its charter and the laws of this State, possessed and was invested with the power to make, issue, and sell said bonds and to execute said mortgage deeds of trust to secure the payment thereof, and that said company, by and through its constituted officers and agents, exercised that power, and that the bonds so issued and secured became and were and are commercial paper and entitled to the faith and credit and clothed with the immunities attached by the laws of the land to such paper, and that the rights and title of this defendant as
119 the *bona fide* purchaser for value and without notice of said 30 bonds are and remain wholly *and* unaffected by any defects or irregularities, whether of act or omission, of said officers and agents in or about the exercise of the power aforesaid, if any such defects or irregularities in fact there were.

And now, having fully answered said bill of complaint, this defendant prays to be hence dismissed with its reasonable costs in this behalf expended.

THE COMMERCIAL BANK OF SELMA,
By R. M. NELSON, *President.*

PETTUS & PETTUS &
T. B. ROY,
Sol's for Defendant.

THE STATE OF ALABAMA, }
Dallas County. }

Before me, Geo. W. Lewis, a notary public in and for said county and State aforesaid, this day personally came R. M. Nelson, who, being by me first duly sworn, on oath says that he is the president of the Commercial Bank of Selma, a corporation, and is authorized to make the foregoing answer for and on behalf of said bank, and that the matters and things therein set forth and contained when stated as of the knowledge of the defendant are true, and when stated on advice of counsel, information, and belief he believes the same to be true.

R. M. NELSON.

Sworn to and subscribed before me this 28th day of November, A. D. 1887.

GEO. W. LEWIS,
Notary Public.

Filed the 29th day of Nov., A. D. 1887.

J. W. DIMMICK, *Clerk.*

120 *Answer of James T. Fitzgerald.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & Co. and Others, Complainants,
vs.
THE BRIERFIELD COAL AND IRON COMPANY *et als.*, Defendants.
} In Equity. 107.

The separate answer of James T. Fitzgerald, one of the defendants, to the bill of complaint of R. S. Hollins, Sr., R. S. Hollins, Jr., John Dickinson, and John A. Hollins, trading as copartners under the firm name of Hollins, Sons & Co., and others, complainants.

This defendant, saving and reserving to itself all right and benefit of exception to the said bill of complaint, for answer thereto or to so much and such parts thereof as this defendant is advised it is material to answer, says:

SECTION 1. That this defendant does not know and is not informed, except by the bill of complaint, and cannot state, whether or no the said Brierfield Coal & Iron Company is indebted to the complainants or either of them in the amounts as alleged in the said bill of complaint, or in any other amount.

SECTION 2. That this defendant is informed and believes and states that on or about the 4th day of May, A. D. 1882, the said Brierfield Coal & Iron Company become and was duly organized
121 and incorporated in and by that corporate name and with a capital stock of $750,000.00, under and in accordance with the statutes of the State of Alabama set forth and contained in article 1st, chapter first, title first, and part second, of the Code of Laws of said State made and provided for the creation of manufacturing, mining, and industrial business corporations, and become and was invested with all the rights, powers, franchises, and privileges conferred by law on corporations of that class, and became and was domiciled and had its office and principal place of business at Brierfield, in the county of Bibb, in this State; and that afterwards, by virtue of an act of the General Assemby of Alabama entitled "An act to amend and ratify the charter of the Brierfield Coal & Iron Company of Bibb county, Alabama," approved December 12, 1884, the charter of said corporation was amended and ratified accordingly.

SECTION 3. And this defendant is informed and believes and so states that in pursuance of a call in that behalf duly made and after & in pursuance of more than thirty days' notice of time and place and purposes thereof, duly given by publication in a newspaper of general circulation published in the said county of Bibb,
122 and in accordance with *and* the requirements of law in such cases, the stockholders of said Brierfield Coal and Iron Company met and assembled in general convention at the office of said

company at Brierfield, Alabama, on the first day of September, A. D. 1882, for the purpose of considering and acting upon the proposition to authorize the creation of a bonded indebtedness of said company to the extent of $500,000.00 and the execution of a proper mortgage deed of trust on the property, real and personal, of said company to secure the payment of such bonded indebtedness; that at said convention all the stockholders of said company were present in person or by proxy and all the stock thereof was duly represented, and that said stockholders' convention, by vote and resolution thereof duly and unanimously adopted, then and there authorized and directed the creation of said bonded indebtedness and the making and the execution of said mortgage deed of trust of the date, tenor, and effect hereinafter designated; that on the said 1st day of September, 1882, the said Brierfield Coal & Iron Company duly executed the mortgage deed of trust to Preston B. Plumb, as trustee, in the bill of complaint referred to and described, in pursuance of the power and authority in it in that behalf vested by law; and by the direction and authority aforesaid of its
123 stockholders in general convention assembled, and also by authority of the board of directors of said company, duly given by a resolution of said board authorizing the president of said company, for and on behalf of the same, to execute that identical mortgage deed trust, which was then and there copied and set out in full on the minutes of the proceedings of said board; that the corporate name of said Brierfield Coal and Iron Company was subscribed to said mortgage deed of trust in execution thereof by Thomas J. Peter as and who then was the president thereof, and the common seal of said corporation was attached thereto and attested by John G. Murray as and who then was the secretary thereof, and the said mortgage deed of trust was duly subscribed by the said Preston B. Plumb, as trustee, who thereby accepted the trusts therein and thereby conveyed and created; that the execution of said mortgage deed of trust was duly acknowledged by said company by and through the said Thomas J. Peter, the president thereof, in said Bibb county, before Jesse W. Mahon, who was then and there a justice of the peace in and for said county, and who duly certified the acknowledgment thereof on the 27th day of September, 1882; that said mortgage deed of trust was shortly after the execution thereof duly recorded in the counties respectively of Bibb, Chilton,
124 and Shelby, as appears by the copy thereof attached to the said bill of complaint and marked "Exhibit A," and that said "Exhibit A" sets forth and contains a substantial copy of the said mortgage deed of trust.

SECTION 4. That in pursuance of the direction and authority aforesaid for the creation of such bonded indebtedness of said company, and under and in accordance with said mortgage deed of trust, the said Brierfield Coal and Iron Company afterwards duly executed, sold, and delivered sundry of its first-mortgage commercial bonds, each of the denomination of $1,000.00, each bearing date the first day of October, 1882, each payable to the said trustee or bearer, at the office of said company, in the city and State of New York, on

the 1st day of October, A. D. 1912, with the proper interest coupons attached to each for the payment of the semi-annual interest thereon at the rate of six per cent. per annum, and each duly authenticated by the certificate of the said trustee endorsed thereon, and each of the form, tenor, and effect more particularly set forth and prescribed in and by said mortgage deed of trust, but this defendant does not know and is not informed and cannot state the number of said bonds so issued nor the persons to whom nor the circumstances under which the same were issue-, except as hereinafter stated and set forth.

125 SECTION 5. And this defendant is informed and believes and so states that afterwards and in accordance with the provisions of said original mortgage deed of trust, for further assurances in the premises, the said Brierfield Coal and Iron Company, on, to wit, the 29th day of July, 1887, for the purpose of further securing the payment of the 500 bonds in the said original mortgage deed of trust mentioned, executed and delivered to the said Preston B. Plumb, as trustee, another mortgage deed of trust, bearing date the 29th day of July, 1887; that the said last-mentioned deed of trust was duly authorized by the board of directors of said company in and by a resolution of said board, duly adopted at a regular meeting thereof and entered in the minutes of the proceedings of said board, and the same was duly executed by said company by and through Thomas J. Peter, as and who then was the president thereof, and the common seal of said corporation was thereto attached and duly attested by the secretary thereof, and the execution of said deed of trust was also duly attested by two subscribing witnesses, and the same was shortly afterwards probated and duly recorded in the said counties respectively of Bibb, Shelton, & Shelby, wherein was

126 and is situate the property, real and personal, thereby granted and conveyed, as appears in and by the copy of said last-mentioned mortgage deed of trust attached to the bill of complaint, marked "Exhibit A," and that said "Exhibit A" sets forth and contains a substantial copy of said last-named mortgag- deed of trust.

SECTION 6. And this defendant is informed and believes and so states that on, to wit, the first day of August, 1887, the said Preston B. Plumb, as such trustee, under and in accordance with the terms and provisions in said mortgage deed of trust in that behalf contained, and on account of the defaults of the said Brierfield Coal and Iron Company in the premises, demanded possession of all the property, real and personal, included in or covered by said mortgage deeds of trust or either of them, and that on, to wit, the 2ond day of August, 1887, the said Plumb, as such trustee, with the consent of said company, took actual possession of all of said property, real and personal, and has since held possession of said property, and so had possession of said property when this bill was filed, as such trustee, under and by virtue of said mortgage deeds of trust.

127 And this defendant is advised by counsel and believes and avers that by reason of the premises and the terms, provisions, operations, and effect of the said mortgage deeds of trust all of the property of said Brierfield Coal and Iron Company, real and personal,

both that owned by it at the date of said original mortgage deed of trust and that since acquired, including choses in action, rights, franchises, and credits, balances due on unpaid subscriptions to capital stock and all items and things whatsoever of value, is granted, conveyed, and pledged to said trustee, and his successor or successors in the trust, as a trust fund to secure the payment of said first-mortgage bonds according to the tenor and effect thereof.

SECTION 7. That at the time of the filing of said bill of complaint this defendant was, and still is, the *bona fide* purchaser and holder for value of twenty (20) of said first-mortgage bonds of said Brierfield Coal and Iron Company, all duly executed and authenticated, and as this defendant is informed and believes, all of which had been duly issued and negotiated by said company for full value, the serial numbers whereof are respectively as follows:

Bonds Nos. 359. 78, 361, 386, 387, 388, 389, 204, 440, 439, 207, 205, 206, 438, 437, 442, 441, 452, 451, 450.

128 That this defendant became the purchaser and holder of said twenty bonds to secure the payment of the following-described notes, which were each drawn by Thomas J. Peter and endorsed by said Brierfield Coal and Iron Company, each dated September 15th, 1886, and each payable at the Commercial Bank of Selma, Ala., and payable at the following times and for the following amounts, to wit:

One note for $6,000.00, payable September 15th, 1887.

One note for $6,000.00, payable March 15th, 1888.

One note for $3,000.00, payable September 15th, 1888.

SECTION 8. That, as this defendant is informed and believes, each and all of said bonds above described so held by this defendant had originally been issued, sold, and negotiated by said Brierfield Coal and Iron Company for full value to other parties than this defendant, and this defendant avers and states that he afterwards acquired and became the purchaser of each of said bonds so held by this defendant in good faith and in the usual and regular course of business for a then present valuable consideration paid and furnished by this defendant—that is to say, money loaned as aforesaid by this defendant to the said Brierfield Coal and Iron Company and the said Thomas J. Peter respectively on the faith and security

129 of said bonds at the dates respectively of the delivery of said bonds to this defendant, and without any knowledge, information, or notice of any of the matters or things in said bill of complaint alleged against said bonds or said mortgage deed of trust or either of them, and without any knowledge, information, or notice of any defence to said bonds or any of them, in whole or in part, if any such there be, or of any invalidity, defect, or infirmity whatsoever, at law or in equity, in said bonds or any of them or in the title thereto of the previous holders, if any such there be.

And this defendant alleges and avers that for the payment of said bonds so held by this defendant, according to the tenor and effect thereof, this defendant is invested with a first lien upon all the property of the said Brierfield Coal and Iron Company of every kind and description, real and personal, including rights, credits,

choses in action, corporate franchises, and any and all amounts and balances due from its stockholders on account of unpaid subscriptions to the capital stock, prior and superior to any and all other rights thereto and liens thereon whatsoever, except the rights and liens of holders of other bonds of the same issue who are
130 *bona fide* purchasers thereof for a valuable consideration, if such there be, and except such liens for purchase-money, if any there be, as may have been reserved by the vendors of particular property purchased by said Brierfield Coal and Iron Company.

SECTION 9. And this defendant, on advice of counsel, information, and belief, for further answer to said bill of complaint, says as follows: This defendant denies that said bonds so held by this defendant as aforesaid or any of them were issued by said Brierfield Coal and Iron Company to any of its stockholders without consideration or for much less than the face or nominal value thereof, as alleged in said bill, and avers that on the contrary thereof said bonds held by this defendant and each of them were issued and negotiated by said company for full and valuable consideration, and denies that said bonds so held by this defendant or the said mortgage deeds of trust or either of them are fraudulent and void or fraudulent and void as against the complain-t in said bill or other creditors of said company or any other person, and avers that said bonds and the said mortgage deeds of trust are each and all valid, binding, and operative, according to their tenor and effect respectively to all intents and purposes.

131 And denies that it required the vote of two-thirds in value of the stock of said Brierfield Coal and Iron Company to authorize the execution of said mortgage deeds of trust, as in said bill alleged, and avers that under the statutes governing the class of corporations to which said company belongs a majority in value of said stock, at most, was sufficient to authorize the execution thereof.

And says it is not true, as alleged in said bill, that the notice of the meeting of the stockholders of said company required by law to authorize the execution of said original mortgage deed of trust was not given, and avers that due notice for over thirty days of the time, place, and purposes of said meeting was given in all respects as prescribed by law in such cases, and says it is not true, as alleged in said bill, that not two-thirds in value of the stock of said corporation voted to authorize the execution of said mortgage deed of trust, and avers the contrary thereof, and that, though the vote of a majority in value of said stock would have been sufficient therefor, as a matter of fact the said stockholders' convention, by the unanimous vote of the entire stock of said corporation, all of which was then and there present, represented, and voted, authorized and directed the creation of said bonded indebtedness and the execution
132 of said mortgage deed of trust.

And this defendant denies that the complainants are entitled to have the unpaid subscriptions to capital stock in the bill mentioned and described applied to the payment of their claims in priority to or on an equality with the claims of this defendant, and

avers that the rights and liens of this defendant and other holders of said bonds in like situation, if any there be, upon said balances, as upon all other property of said company, are paramount to any rights of the complainants in the premises.

And this defendant is advised by counsel and believes and states and charges that at the time of the creation of said bonded debt and the execution of said mortgage deeds of trust the said Brierfield Coal and Iron Company, under and by virtue of its charter and the laws of this State, possessed and was invested with the power to make, issue, and sell said bonds and to execute said mortgage deeds of trust to secure the payment thereof, and that said company, by and through its constituted officers and agents, exercised that power, and that the bonds so issued and secured became and were and are commercial paper and entitled to the faith
133 and credit and clothed with the immunities attached by the law of the land to such paper, and that the rights and title of this defendant, as the *bona fide* purchaser for value and without notice of said bonds so held by this defendant, are and remain wholly unaffected by any defects or irregularities, whether of act or omission, of said officers and agents in or about the exercise of the power aforesaid, if any such defects or irregularities in fact there were.

And now, having fully answered said bill of complaint, this defendant prays to be hence dismissed with *its* reasonable costs in this behalf expended.

PETTUS & PETTUS,
Sol's for Defendant.

THE STATE OF ALABAMA, }
Perry County. }

Before me, C. H. Seawell, a notary public in and for the county and State aforesaid, this day personally came James T. Fitzgerald, who, being by me first duly sworn, on oath says that the matters and things in the foregoing answer set forth when stated as of the knowledge of the defendant are true and when stated on advice of counsel, information, and belief he believes them to be true.

JAMES T. FITZGERALD.

Sworn to and subscribed befor- me this 30th day of November, 1887.

C. H. SEAWELL,
Notary Public.

Filed Dec. 1, A. D. 1887.

J. W. DIMMICK, *Clerk.*

134 *Joint and Separate Answer of W. D. and Kearsley Carter, Jr.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

HOLLINS, SONS AND COMPANY *et als.*
vs.
THE CITY NATIONAL BANK OF SELMA, Corporation; THE Brierfield Coal and Iron Company, Corporation, &c.; W. D. Carter, Kearsley Carter, *et als.* } 107.

The joint and separate answer of W. D. Carter and Kearsley Carter, defendants, to the bill of complaint heretofore filed in the above-entitled cause.

These respondents, W. D. Carter and Kearsley Carter, for answer to the several paragraphs of complainants' bill of complaint, answering, says that they severally have no personal knowledge of the many and various allegations contained and set forth in the several paragraphs of said bill, except the averments made in one of the paragraphs of said bill (not numbered) to the effect that W. D. Carter and Kearsley Carter, Jr., claim a lien by virtue of a mortgage on certain of the property set forth and described in the agreement, a copy of which is hereto attached, marked "Exhibit B." These respondents aver that they not only claim to have a lien by virtue of said mortgage, but in fact have such lien, which is for the balance of the unpaid purchase-money due by said Brierfield Coal
135 and Iron Company for & upon the property mentioned therein, & which was sold by these respondents to said company. These respondents, answering further, aver that the sum of over sixteen thousand dollars is still due and unpaid by said company under said mortgage and on said purchase, and that these defendants have a vendors' lien on all the property sold by them to said company & more particularly described in said mortgage deed; that all of said indebtedness is evidenced by the notes of said company, duly signed by T. J. Peter as president of said company, & all of the balance due thereon is long past due. And these defendants further aver that, in the opinion and belief, the agreement mentioned and referred to in said bill of complaint was extorted from these defendants by said Peter and other officers of said company for the sole and only purpose of getting a delay; that they knew that the company was going to fail and covinously kept secret that fact under glittering promises to pay defendants until they (said officials) could so manage the details of said failure that defendants' advertisement of the property under the power of
136 sale contained in said mortgage or a bill by them to foreclose the same would have precipitated the crash and caused the failure of the company before said officials and other interested parties were ready to announce the same. These respondents aver that they entered into said agreement, postponing the dates of pay-

ment of said unpaid balance of said purchase-money, solely for the purpose of accom-odating & obliging the said Peter, & that the agreement is without any legal consideration moving to them therefor; answering further, they declare that many of said allegations and averments contained in said bill of complaint they have severally heard discussed & surmised by what might be properly termed "outside people," but that these defendants, knowing nothing of their own personal knowledge, cannot either admit or deny the facts set out therein and they call for strict proof thereof. These respondents know nothing of any indebtedness due by said company to any body or person except themselves, and cannot therefor admit or deny the same. They admit the residence and citi-
137 zenship of all the parties *to the* complainant and defendant to the said bill of complaint.

And these defendants ask your honorable court to make such orders and decrees *such* as may be necessary and proper to be made in the premises to protect the rights and preserve and enforce the lien of these defendants upon the property described in said mortgage; and now, having fully answered, these defendants respectively ask to be hence dismissed with their reasonable costs; and as in duty bound these defendants will ever pray, &c.

RICE & WILEY,
Sol's for W. D. & K. Carter.

Filed Dec. 1st, 1887.

J. W. DIMMICK, *Clerk.*

138 *C. E. James & Co. Made Parties Complainant.*

In the Circuit Court of the United States for the Middle District of Alabama. Sitting in Equity.

HOLLINS, SONS AND COMPANY *et al.*
vs.
THE CITY NATIONAL BANK OF SELMA, a Corporation, &c.; THE BRIERFIELD COAL & IRON COMPANY, *et al.* } 107.

To the judges of the circuit court of the United States for the middle district of Alabama, in the fifth judicial circuit, sitting in equity:

C. E. James, doing business under the name & style of C. E. James & Co. (the company being merely nominal), who is a resident citizen of the State of Tennessee, respectfully represents that the Brierfield Coal and — Company, a corporation duly organized and existing under the laws of the State of Alabama, is justly indebted to your orator, the said C. E. James, by the following evidences of indebtedness, to wit:

By verified account, past due, $205.23.
By note, executed Feb'y 15th, 1887, for $319.30.
By note, executed July 12th, 1887, " 889.35.
By note, executed July 12th, 1887, " 889.35.
By note, executed July 12th, 1887, " 889.35.
By note, executed July 12th, 1887, " 196.05.

All of which notes were duly executed by said Brierfield Coal and Iron Company, by T. J. Peter, as president, on the dates
139 respectively hereinabove mentioned, and payable to the order of C. E. James & Co. at Commercial Bank of Selma, value received; and your orator, said C. E. James, trading and doing business under said name and style of C. E. James & Co., at Chattanooga, in the State of Tennessee, asks to intervene in the matter of the suit of Hollins, Sons & Co. *et al.* against The City National Bank *et al.*, who sue as well on behalf of themselves as of all other creditors of the Brierfield Coal and Iron Company who may thereafter come and contribute to the expenses of said suit, which is now pending and undetermined in the said circuit court of the United States for the middle district of Alabama, in equity; and orator expresses a willingness to contribute to the expenses of said suit as one of the complainants therein, and now prays to amend said original bill so that he be made a party complainant to said bill of complainant; and he adopts all the allegations and averments contained in said bill of complaint in all respects precisely as if he was one of the original complainants who filed said bill.

RICE & WILEY,
For Complainants.

Filed in office Dec. 1, 1887.

J. W. DIMMICK, *Clerk.*

140 *Answer of C. C. Huckabee.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. *et als.*
vs.
THE BRIERFIELD COAL AND IRON COMPANY *et als.* } 107

The respondent, C. C. Huckabee, for answer to the bill of complaint in said cause, says that it is not true that he is still indebted to the Brierfield Coal and Iron Company for the stock which he holds in said company, but avers that before the formation of said company this respondent and R. L. McCalley were the owners of a lot of real estate on which the buildings (rolling mill) of said company is now situated, this respondent owning three-fourths interest and the said McCalley owning one-fourth interest therein; and before the formation of said company this respondent and said McCalley sold the said real estate to the said Thomas J. Peter for the sum of forty-five thousand dollars, twenty-five thousand of which was paid by said Peter, leaving twenty thousand unpaid; that subsequently the said Peter agreed with respondent and said McCalley that a corporation should be formed and that the property sold by respondent and McCalley to said Peter, together with a large lot of

lands belonging to said Peter, should become the property
141 of said corporation to be formed, and that in payment of said twenty thousand dollars, balance due to this respondent and said McCalley, respondent was to receive from said corporation fifteen thousand dollars in bonds and fifteen thousand dollars of the paid-up stock of said corporation, and that said McCalley was to receive five thousand dollars in the bonds of said company and five thousand dollars of the stock of said corporation; that the said corporation was formed, and was called the Brierfield Coal and Iron Company; that in pursuance of said agreement this defendant received from said company fifteen thousand dollars of the bonds of said company, less about two thousand dollars deducted to settle a controversy with one Collins in reference to the title of some of the real estate sold by respondent and said McCalley as aforesaid, and respondent also received a receipt, dated May 8th, 1882, acknowledging full payment for the said fifteen thousand dollars of stock; that the said McCalley received a receipt, dated May the 8th, 1882, acknowledging full payment for five thousand dollars of the stock of said company, but for some reason unknown to respondent
142 the said company, although acknowledging the ownership of the said McCalley to five thousand dollars of said bonds, have failed and refused to deliver said bonds to said McCalley.

Respondent avers that he has fully paid for all his stock in said company. Respondent sold his thirteen bonds to one J. B. Fitzgerald, and has no interest in said bonds now. He further avers that he did not receive any interest on said bonds while he had the same.

He admits that the bonds issued to other holders were without consideration. Further he saith not.

WATTS & SON,
Sol's for Defendant, C. C. Huckabee.

Before me, Benj. P. Seals, dep. clerk of the circuit court United States for the middle district of Alabama, personally appeared Caswell C. Huckabee, who is known to me, and who, being duly sworn, deposes and says that the matters hereinbefore alleged are true and correct to the best of his information, knowledge, and belief.

C. C. HUCKABEE.

Sworn to and subscribed before me this 5th December, 1887.

BENJ. P. SEALS,
Dep. Clerk U. S. Cir. C't, Mid. Dist. of Ala.

Filed 5th day of Dec., 1887.

J. W. DIMMICK, *Clerk.*

143 *Answer of Esther A. Peter.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. and Others, Complainants,
vs.
THE BRIERFIELD COAL AND IRON COMPANY and Others, Defendants. } In Equity. 107

The separate answer of Esther A. Peter, one of the defendants, to the bill of complaint of R. S. Hollins, Sr., R. S. Hollins, Jr., John Dickinson, and John A. Hollins, trading as copartners under the firm name of Hollins, Sons & Co., and others, complainants.

This defendant, saving and reserving to herself all right and benefit of exception to the said bill of complaint, for answer thereto, or to so much and such parts thereof as she is advised it is material to answer, says:

SECTION 1. That this defendant does not know and is not informed, except by the bill of complaint, and cannot state whether or no the said Brierfield Coal and Iron Company is indebted to the complainants or either of them in the amounts as alleged in the said bill of complaint, or in any other amount.

SECTION 2. That this defendant is informed and believes and states that on or about the 4th day of May, 1882, the said Brierfield
144 Coal and Iron Company became and was duly organized and incorporated in and by that corporate name and with a capital stock of $750,000.00, under and in accordance with the statutes of the State of Alabama, set forth and contained in article first, chapter first, title first, and part second, of the Code of Laws of said State made and provided for the creation of manufacturing, mining, and industrial business corporations, and became and was invested with all the rights, powers, franchises, and privil*e*dges conferred by law on corporations of that class, and became and was domiciled and had its office and principal place of business at Brierfield, in the county of Bibb, in this State, and that afterwards, by virtue of an act of the General Assembly of Alabama entitled "An act to amend and ratify the charter of the Brierfield Coal and Iron Company of Bibb county, Alabama," approved December 12th, 1884, the charter of said corporation was amended and ratified accordingly.

SECTION 3. And this defendant is informed and believes and so states that in pursuance of a call in that behalf duly made, and after and in pursuance of more than thirty days' notice of time and place and purposes thereof, duly given by publication in a newspaper of general circulation published in said county
145 *county* of Bibb and in accordance with all the requirements of law in such cases, the stockholders of the said Brierfield Coal and Iron Company met and assembled in general convention*ed* at the office of said company at Brierfield, Alabama, on the first day

of September, A. D. 1882, for the purpose of considering and acting upon the proposition to authorize the creation of a bonded indebtedness of said company to the extent of $500,000.00 and the execution of a proper mortgage deed of trust on the property, real and personal, of said company to secure the payment of such bonded indebtedness; that at said convention all the stockholders of said company were present in person or by proxy, and all the stock thereof was duly represented, and that said stockholders' convention, by vote and resolution thereof duly and unanimously adopted, then and there authorized and directed the creation of said bonded indebtedness and the making and execution of said mortgage deed of trust of the date, tenor, and effect hereafter designated; that on the said 1st day of September, 1882, the said Brierfield Coal and Iron Company duly executed the mortgage deed of trust to Preston B.
146 Plumb, as trustee, in the bill of complaint referred to and described, in pursuance of the power and authority in it in that behalf vested by law and by the direction and authority aforesaid of its stockholders in general convention assembled, and also by authority of the board of directors of said company, duly given by a resolution of said board authorizing the president of said company, for and on behalf of the same, to execute the identical mortgage deed of trust which was then and there copied and set out in full on the minutes of the proceedings of said board; that the corporate name of said Brierfield Coal and Iron Company was subscribed to said mortgage deed of trust in execution thereof by Thomas J. Peter as and who then was the president thereof, and the common seal of said corporation was attached thereto by John G. Murray and the same was attested by said John G. Murray as and who then was secretary thereof, and the said mortgage deed of trust was duly subscribed by the said Preston B. Plumb, as trustee, who thereby accepted the trusts therein and thereby created.

That the execution of said mortgage deed of trust was duly
147 acknowledged by said company by and through the said Thomas J. Peter, the president thereof, in said Bibb county, before Jesse W. Mahon, who was then and there a justice of the peace in and for said county and who duly certified the acknowledgement thereof on the 27th day of September, 1882; that said mortgage deed of trust was shortly after the execution thereof duly recorded in the counties respectively of Bibb, Chilton, and Shelby, as appears by the copy thereof attached to the said bill of complaint and marked "Exhibit A," and that said "Exhibit A" sets forth and contains a substantial copy of the said mortgage deed of trust.

SECTION 4. That in pursuance of the direction and authority aforesaid for the creation of such bonded indebtedness of said company and under and in accordance with said mortgage deed of trust the said Brierfield Coal and Iron Company afterwards duly executed, sold, and delivered sundry of its first-mortgage commercial bonds, each of the denomination of $1,000.00 each, bearing date the 1st day of October, A. D. 1882, each payable to the said trustee or bearer, at the office of said company in the city and State

of New York, on the 1st day of October, A. D. 1912, with the
148 proper interest coupons attached to each for the payment of the semi-annual interest thereon at the rate of six per cent. per annum, and each duly authenticated by the certificate of the said trustee endorsed thereon, and each of the form, tenor, and effect more particularly set forth and prescribed in and by said mortgage deed of trust; but this defendant does not know the numbers of bonds so issued nor the persons to whom nor the circumstances under which the same were issued, except as hereinafter stated and set forth.

SECTION 5. And this defendant is informed and believes and so states that afterwards and in accordance with the provisions of said original mortgage deed of trust, for the further assurance in the premises, the said Brierfield Coal and Iron Company, on, to wit, the 29th day of July, 1887, for the purpose of further securing the payment of the 500 bonds in the original mortgage deed of trust mentioned, executed and delivered to the said Preston B. Plumb, as trustee, another mortgage deed of trust, bearing date the 29th day of July, 1887; that the said last-mentioned deed of trust was duly authorized by the board of directors of said company in and by a resolution of said board, duly adopted at a regular meeting thereof and entered on the minutes of the proceedings
149 of said board, and the same was duly executed by said company by and through Thomas J. Peter as and who then was the president thereof, and the common seal of said corporation was thereto attached and duly attested by the secretary thereof, and the execution of said deed of trust was also duly attested by two subscribing witnesses, and the same was shortly afterwards probated and duly recorded in the said counties respectively of Bibb, Chilton, and Shelby (wherein was and is situated the property, real and personal, thereby granted and conveyed), as appears in and by the copy of said last-mentioned mortgage deed of trust attached to the bill of complaint, marked "Exhibit A," and that said "Exhibit A" sets forth and contains a substantial copy of said last-named mortgage deed of trust.

SECTION 6. And that on, to wit, the 1st day of August, 1887, the said Preston B. Plumb, as such trustee, under and in accordance with the terms and provisions in said mortgage deeds of trust in that behalf contained and on account of the defaults of said Brierfield Coal and Iron Company in the premises, demanded possession of all the property, real and personal, included in or
150 covered by said mortgage deeds of trust or either of them, and that on, to wit, the 2d day of August, 1887, the said Plumb, as such trustee, with the consent of said company, took actual possession of all of said property, real and personal, and has ever since held possession of said property, and so had possession of said property when this bill was filed, as such trustee, under and by virtue of said mortgage deeds of trust; and this defendant is advised by counsel and believes and avers that by reason of the premises and the terms, provisions, operation, and effect of said mortgage deed of trust all the property of said Brierfield Coal and

Iron Company, real and personal, both that owned by it at the date of said original mortgage deed of trust and that since acquired, including choses in action, rights, franchises and credits, balances due on unpaid subscriptions to capital stock, and all items and things whatsoever of value, is granted, conveyed, and pledged to said trustee and his successor or successors in the trusts as a trust fund to secure the payment of said first-mortgage bonds according to the tenor and effect thereof.

151 SECTION 7. That this defendant subscribed for $50,000.00 of the capital stock of said Brierfield Coal and Iron Company, for which she paid *the* cash the sum of $50,000.00; and this defendant denies that she is indebted to said Brierfield Coal and Iron Company in any amount whatsoever on account of her subscription to said stock or any other account, and avers, on the contrary, that she paid up in full, in cash, the entire amount of her said subscription; that this defendant purchased from said Brierfield Coal and Iron Company one hundred and ninety-eight (198) of the first-mortgage bonds of said company, secured by and issued under said mortgage deeds of trust, for which she paid in cash $900.00 per bond, or at the rate of 90 cents on the dollar; all of said bonds were duly issued and authenticated and were purchased by this defendant in good faith and without any knowledge or information of any defect or infirmity therein, if any such there be; that said bonds are numbered respectively as follows: 9 to 40, both inclusive; 74 to 77, both inclusive; 123 to 127, both inclusive; 180 to 188, both inclusive; 306, 307, 308, 313 to 319, both inclusive; 334 to
152 358, both inclusive; 374 to 380, both inclusive; 390 to 422, both inclusive; 459 to 488, both inclusive; 495 to 500, both inclusive; 215 to 228, both inclusive; 254 to 261, both inclusive; 362 to 370, both inclusive; 320 to 323, both inclusive, and 265 and 360; that, in addition to said 198 bonds so purchased and paid for by this defendant as aforesaid, this defendant also purchased from said company, and paid therefor at the rate of 90 cents *in* the dollar, 20 other bonds, issued under and secured by said mortgage deed of *of* trust. Five of said bonds, numbered respectively 1, 2, 245, 246, 247, were registered in the books of said company in the name of Thomas J. Peter, as trustee for this defendant's son, Edward T. Peter, and the said registration was noted on each of said bonds. This was done as a gift by this defendant to her son, Edward T. Peter. Five other of said twenty bonds, numbered respectively 3, 4, 248, 249, 250, were registered on the books of said company in the name of Thomas J. Peter, as trustee for Florence J. Peter, who is a daughter of this defendant. This was done as a gift from this defendant to her said daughter. Five other of said twenty bonds, numbered respectively 5, 6, 189, 190, and 191, were registered on the
153 books of said company in the name of said Thomas J. Peter, as trustee for George F. Peter. This was done as a gift from this defendant to her son, George F. Peter. Five other of said twenty bonds were registered on the books of said company in the name of Thomas J. Peter, as trustee for Blanche E. Peter, the daughter of this defendant, the said five bonds numbered respectively 7, 8, 192,

193, and 194. This was done as a gift from this defendant to her said daughter, Blanche E. Peter.

SECTION 8. And this defendant avers and states that she acquired and became the purchaser of each of said bonds so held by this defendant in good faith, in the usual and regular course of business, for a then present valuable consideration, paid and furnished by this defendant, and without any knowledge, information, or notice of any of the matters or things in said bill of complaint alleged against said bonds or said mortgage deeds of trust or either of them, and without any knowledge, information, or notice of any defence to said bonds or any of them, in whole or in part, if any such there be, as of any invalid-ty, defect, or infirmity whatsoever, at law or in equity, in said bonds or any of them, if any such there be; and this defendant is advised by counsel and is informed and believes
154 and states that for the payment of said bonds according to the tenor and effect thereof this defendant is invested with a first lien upon all the property of the Brierfield Coal and Iron Company of every kind and description, real and personal, including rights, franchises, credits, choses in action, and any and all amounts and balances due from its stockholders on account of unpaid subscriptions to the capital stock thereof, prior and superior to any and all other rights thereto and liens thereon whatsoever, except the rights and liens of holders of other bonds of the same issue, who are *bona fide* purchasers thereof for a valuable consideration, if any such there be, and except such liens for purchase-money, if any there be, as may have been reserved by the vendors of particular property purchased by said Brierfield Coal and Iron Company.

SECTION 9. And this defendant, on advice of counsel, information, and belief, for further answer to said bill of complaint, says as follows: This defendant denies that said bonds so held by this defendant as aforesaid or any of them were issued by said Brierfield Coal and Iron Company to any of its stockholders without
155 consideration or for much less than the face or nominal value therefor, as alleged in said bill, and avers that on the contrary thereof that said bonds held by this defendant and each of them were issued and negotiated by said company for full and valuable consideration; and denies that said bonds so held by this defendant or the said mortgage deeds of trust or either of them are fraudulent and void or fraudulent and void as against the complainants in said bill or other creditors of said company or any other person; and avers that said bonds and the said mortgage deed of trust are each and all valid, binding, and operative according to the tenor and effect, respectively, to all intents and purposes; and denies that it required the vote of two-thirds in value of the stock of said Brierfield Coal and Iron Company to authorize the execution of said mortgage deeds of trust, as in said bill alleged; and avers that under the statutes governing the class of corporations to which said company belongs a majority in value of said stock, at most, was sufficient to authorize the execution thereof; and says it is not true as alleged in said bill that the notice of the meeting of the stockholders of

said company required by law to authorize the execution of
156 said original mortgage deed of trust was not given; and avers that due notice for over thirty days of the time and place and purposes of said meeting was given in all respects as required by law in such cases; and says it is not true as alleged in said bill that not two-thirds in value of the stock of said corporation voted to authorize the execution of said mortgage deed of trust; and avers that on the contrary thereof, though the vote of a majority of said stock in value would have been sufficient therefor, as a matter of fact the said stockholders' convention, by the unanimous vote of the entire stock of said corporation, all of which was then and there present, represented, and *valid*, authorized the creation of said bonded indebtedness and the execution of said mortgage deed of trust; and this defendant denies that the complainants are entitled to have the benefit of the unpaid subscriptions to capital stock in the bill mentioned and described applied to the payment of either claims in priority to or on an equality with the claims of this defendant; and avers that the rights and liens of this defendant and other holders of said bonds in like situation, if any there be, upon said balances, as upon all other property of said company, are paramount to any rights of the complainants in the premises.

157 And this defendant is advised by counsel, and believes and states and charges, that at the time of the creation of said bonded debt and the execution of said mortgage deeds of trust the said Brierfield Coal and Iron Company, under and by virtue of its charter and the laws of this State, possessed and was invested with the power to make, issue, and sell said bonds and to execute said mortgage deeds of trust to secure the payment thereof, and that said company, by and through its constituted officers and agents, exercised that power; and that the bonds so issued and secured became and were and are commercial paper and entitled to the faith and credit and clothed with the immunities attached by law of the land to such paper; and that the rights and title of this defendant as a *bona fide* purchaser for value and without notice of said bonds so held by this defendant are and remain wholly unaffected by any defects or irregularities, whether of act or omission of said officers and agents, in or about the exercise of the power aforesaid, if
158 any such defects and irregularities in fact there were; and now, having fully answered said bill of complaint, this defendant prays to be hence dismissed with its reasonable costs in this behalf expended.

PETTUS & PETTUS,
Solicitors for the Defendant, Esther A. Peter.

THE STATE OF MISSOURI, }
City of St. Louis. }

Before me, Julius Robertson, a notary public in and for the city of St. Louis and State aforesaid, this day personally came Esther A. Peter, who, being duly sworn, on oath says that the matters and things in the foregoing answer set forth when stated as of the

knowledge of the defendant are true, and when stated on advice of counsel, information, and belief she believes them to be true.

ESTHER A. PETER.

Sworn and subscribed to before me this 5th day of December, 1887.

JULIUS ROBERTSON,
Notary Public, City of St. Louis, Mo.

Filed the 12th day of Dec., 1887.

J. W. DIMMICK, *Clerk.*

159 *Answer of Thos. J. Peter.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. and Others, Complainants,
vs.
THE BRIERFIELD COAL & IRON COMPANY and Other-, Def'ts. } In Equity. 107.

The separate answer of T. J. Peter, one of the defendants, to the bill of complaint of R. S. Hollins, Sr., R. S. Hollins, Jr., John Dickinson, and J. A. Hollins, trading as copartners under the firm name of Hollins, Sons & Co., and others, complainants.

This defendant, saving and reserving to himself all right and benefit of exception to the said bill of complaint, for answer thereto or to so much and such parts thereof as he is advised it is material to answer, says:

SECTION 1. That this defendant has no personal knowledge of the indebtedness of the Brierfield Coal and Iron Company to the complainants, as alleged in the said bill of complaint, and demands proof of the same.

SECTION 2. That this def't states that on or about the 4th day of May, A. D. 1882, the said Brierfield Coal and Iron Company became and was duly organized and incorporated in and by that corporate name and with a capital stock of $750,000.00, under and in accordance with the statutes of the State of Alabama set forth
160 and contained in article 1st, chapter 1st, title 1st, and part second of the code of laws of said State made and provided for the creation of manufacturing, mining, and industrial business corporations, and became and was invested with all the rights, powers, franchises, and privileges conferred by law on corporations of that class, and became and was domiciled and had its office and principal place of business at Brierfield, in the county of Bibb, in this State, and that afterwards, by virtue of an act of the General Assembly of Alabama, entitled "An act to amend and ratify the charter of the Brierfield Coal and Iron Company of Bibb county, Alabama," approved Dec. 12th, 1884, the charter of said corporation was amended and ratified accordingly.

SECTION 3. And this defendant states that in pursuance of a call, in that behalf duly made after and in pursuance of more than thirty days' notice of time and place and purposes thereof, duly given by publication in a newspaper of general circulation published in said county of Bibb, and in accordance with all the requirements of law in such cases, the stockholders of the said Brierfield Coal and
161 Iron Company met and assembled in general convention at the office of said company, at Brierfield, Alabama, on the 1st day of September, A. D. 1882, for the purpose of considering and acting upon the proposition to authorize the creation of a bonded indebtedness of said company to the extent of $500,000.00, and the execution of a proper mortgage deed of trust on the property, real and personal, of said company to secure the payment of such bonded indebtedness; that at said convention all the stockholders of said company were present in person or by proxy and all the stock thereof was duly represented, and that said stockholders' convention, by vote and resolution thereof duly and unanimously adopted, then and there authorized and directed the creation of said bonded indebtedness and the making and execution of said mortgage deed of trust of the date, tenor, and effect hereinafter designated; that on the said 1st day of September, A. D. 1882, the said Brierfield Coal and Iron Company duly executed the mortgage deed of trust to Preston B. Plumb, as trustee in the bill of complaint referred to and described, in pursuance of the power and authority aforesaid of its stockholders in general convention assembled,
162 and also by authority of the board of directors of said company, duly given by a resolution of said board, authorizing the president of said company, for and on behalf of the same, to execute the identical mortgage deed of trust, which was then and there copied and set out in full on the minutes of the proceedings of said board of directors; that the corporate name of said Brierfield Coal and Iron Company was subscribed to said mortgage deed of trust, in execution thereof, by Thomas J. Peter, as and who then was the president thereof, and the common seal of said corporation was attached thereto by John G. Murray, and the same was attested by John G. Murray, as and who then was the secretary thereof, and the said mortgage deed of trust was duly subscribed by the said Preston B. Plumb as trustee, who thereby accepted the trusts therein and thereby created; that the execution of said mortgage deed of trust was duly acknowledged by said company by and through the said Thomas J. Peter, the president thereof, in said Bibb county, before Jesse W. Mahan, who was then and there a justice of the peace in and for said county, and who duly certified the acknowledgement thereof on the 27th day of September, 1882; that said mortgage deed of trust was, shortly after the execution
163 thereof, duly recorded in the counties respectively of Bibb, Chilton, and Shelby, as appears by the copy thereof attached to the said bill of complaint and marked "Exhibit A," and that said "Exhibit A" sets forth and contains a substantial copy of the said mortgage deed of trust.

SECTION 4. That in pursuance of the direction and authority

aforesaid for the creation of such bonded indebtedness of said company and under and in accordance with said mortgage deed of trust the said Brierfield Coal and Iron Company afterwards duly executed, sold, and delivered sundry of the first-mortgage commercial bonds, each of the denomination of $1,000.00 and each bearing date the 1st day of October, A. D. 1882, each payable to the said trustee or bearer or purchaser at the office of said company, in the city and State of New York, on the first day of October, A. D. 1912, with the proper interest coupons attached to each for the payment of the semi-annual interest thereon at the rate of six per cent. per annum, and each duly authenticated by the certificate of the said trustee endorsed thereon, and each of the form, tenor, and effect more particularly set forth and prescribed in and by said mortgage deed of trust.

164 SECTION 5. And this defendant states that afterwards and in accordance with the provisions of said original mortgage deed of trust, for the further assurance in the premises, the said Brierfield Coal and Iron Company on, to wit, the 29th day of July, 1887, for the purpose of further securing the payment of the 500 bonds in the original mortgage deed of trust mentioned, executed and delivered to the said Preston B. Plumb, as trustee, another mortgage deed of trust, bearing date the 29th day of July, 1887; that the said last-mentioned deed of trust was duly authorized by the board of directors of said company in and by a resolution of said board of directors duly adopted at a regular meeting thereof and entered on the minutes of the proceedings of said board, and the same was duly executed by said company, by and through Thomas J. Peter as and who then was the president thereof, and the common seal of said corporation was thereto attached and duly attested by two subscribing witnesses, and the same was shortly afterwards *was* probated and duly recorded in the said counties respectively of Bibb, Chilton, and Shelby (wherein was and is situated
165 the property, real and personal, thereby granted and conveyed), as appears in and by the copy of said last-mentioned mortgage deed of trust attached to the bill of complaint, marked "Exhibit A," and that said "Exhibit A" sets forth and contains a substantial copy of said last-named mortgage deed of trust.

SECTION 6. And this defendant states that on, to wit, the 1st day of August, 1887, the said Preston B. Plumb, as such trustee, under and in accordance with the terms and provisions in said mortgage deed of trust in that behalf contained, and on account of the defaults of said Brierfield Coal and Iron Company in the premises, demanded possession of all the property, real and personal, included in or covered by said mortgage deeds of trust, or either of them; and that on, to wit, the second day of August, 1887, the said Plumb, as such trustee, with the consent of said company, took actual possession of all of said property, real and personal, and has ever since held possession of said property, and so had possession of said property when this bill was filed, as such trustee, under and by virtue of said mort- deeds of trust; and this defendant is advised
166 by counsel, and believes and avers, that by reason of the

premises and the terms, provisions, operation, and effect of said mortgage deeds of trust all of the property of said Brierfield Coal & Iron Company, real and personal, both that owned by it at the date of said original mortgage deed of trust and that since acquired, including choses in action, rights, franchises, and credits, balances due on unpaid subscriptions to capital stock, and all items and things whatsoever of value, is granted, conveyed, and pledged to said trustee, and his successor or successors in the trust, as a trust fund to secure the payment of said first-mortgage bonds, according to the tenor and effect thereof.

SECTION 7. That the defendant, for himself and associates, subscribed for $120,000.00 of the capital stock of said Brierfield Coal and Iron Company, for which he paid in full; and this defendant denies that he is indebted to said Brierfield Coal and Iron Company in any amount whatsoever on account of his subscription to said capital stock or on any other account, and avers, on the contrary, that said company is indebted to him in a large amount, namely, $66,058.45;
167 that this defendant purchased from said Brierfield Coal and Iron Company 71 of the 1st-mortgage bonds of said company secured by and issued under said mortgage deed of trust, for which he paid in cash $900.00 per bond or at the rate of 90 cents on the dollar; all of said bonds were duly issued and authenticated and were purchased by this defendant in good faith and without any knowledge or information of any defect or infirmity therein, if any such there be, and that said bonds are numbered, respectively, as follows: 195 to 203, both inclusive; 235 to 240, both inclusive; 434 to 436, both inclusive; 443 to 445, both inclusive; 453 to 458, both inclusive; 208 to 214, both inclusive; 324 to 333, both inclusive; 423 to 433, both inclusive; 241 to 244, both inclusive; 381 to 385, both inclusive; 78, 359, 361, 386 to 389, both inclusive.

SECTION 8. And this defendant avers and states that he acquired and became the purchaser of each of said bonds so held by this defendant in good faith and in the usual and regular course of business for a then present valuable consideration paid and furnished by this defendant, and without any knowledge or information
168 of any of the matters and *or* things in said bill of complaint alleged against said bonds or said mortgage deed of trust or either of them, and without any knowledge or information of any defence to said bonds or any of them, in whole or in part, if any such there be, or of any invalidity, defect, or infirmity whatsoever, at law or in equity, in said bonds or any of them, if any such there be; and this defendant is advised by counsel and is informed and believes and states that for the payment of said bonds, according to the tenor and effect thereof, this defendant is invested with a first lien upon all the property of the Brierfield Coal and Iron Company of every kind and description, real and personal, including rights, franchises, credits, choses in action, and any and all amounts and balances due from its stockholders on account of unpaid subscriptions to the capital stock thereof, prior and superior to any and all other rights thereto and liens thereon whatsoever, except the rights and liens of holders of other bonds of the same issue, who are *bona fide*

purchasers thereof for a valuable consideration, if any such there be, and except such liens for purchase-money, if any there be,
169 as may have been reserved by the vendors of particular property purchased by said Brierfield Coal and Iron Company.

SECTION 9. And this defendant, on advice of counsel, information, and belief, for further answer to said bill of complaint, says as follows:

This defendant denies that said bonds so held by this defendant as aforesaid, or any of them, were issued by said Brierfield Coal and Iron Company to any of its stockholders without consideration or for much less than the face or nominal value thereof as alleged, in said bill, and avers that on the contrary thereof that said bonds held by this defendant and each of them were so issued and negotiated by said company for full and valuable consideration.

And denies that said bonds so held by this defendant or the said mortgage deeds of trust or either of them are fraudulent and void or fraudulent & void as against the complainants in said bill or other creditors of said company or any other person; and avers that said bond and the said mortgage deed of trust are, each and all, valid, binding, and operative according to the tenor and effect, respectively, to all intents and purposes.

And denies that it required the vote of two-thirds in value
170 of the stock of said Brierfield Coal and Iron Company to authorize the execution of said mortgage deeds of trust, as in said bill alleged, and avers that under the statutes governing the class of corporations to which said company belongs a majority in value of said stock, at most, was sufficient to authorize the execution thereof; and says it is not true, as alleged in said bill, that the notice of the meeting of the stockholders of said company required by law to authorize the execution of said original mortgage deed of trust was not given; and avers that due notice for over thirty days of the time, place, and purposes of said meeting was given in all respects as required by law in such cases; and says it is not true, as alleged in said bill, that not two-thirds in value of the stock of said corporation voted to authorize the execution of said mortgage deed of trust; and avers, on the contrary, though the votes of a majority of said stock in value would have been sufficient therefor, as a matter of fact the said stockholders' convention, by the unanimous vote of the entire stock of said corporation, all of which was then and there present, represented, and voted, authorize- the creation of
171 said bonded indebtedness and the execution of said mortgage deeds of trust.

And this defendant denies that the complainants are entitled to have any benefit of the unpaid subscription to the capital stock in the bill mentioned and described applied to the payment of their claims in priority to or on an equality with the claims of this defendant, and avers that the rights and liens of this defendant and other holders of said bonds in like situation, if any there be, upon said balances, as upon all other property of said company, are paramount to any rights of the complainants in the premises.

And this defendant is advised by counsel and believes and states

and charges that at the time of the creation of said bonded debt and the execution of said mortgage deeds of trust the said Brierfield Coal and Iron Company, under and by virtue of its charter and the laws of this State, possessed and was invested with the power to make, issue, and sell said bonds and to execute said mortgage deeds of trust to secure the payment thereof, and that said company, by and through its constituted officers and agents, exercised that
172 power, and that the bonds so issued and secured became and were and are commercial paper and entitled to the faith and credit and clothed with the immunities attached by the law of the land to such paper, and that the rights and title of this defendant as a *bone fide* purchaser for value and without notice of said bonds, as held by this defendant, are and remain wholly unaffected by any defect- or irregularities, whether of act or omission, of said officers and agents in or by the exercise of the power aforesaid, if any such defects and irregularities in fact there were. This respondent expressly denies all allegations of fraud and fraudulent intent in said bill, and all allegations of fact contained in said bill and not expressly admitted in this answer are hereby denied and strict proof thereof is required.

And now, having fully answered said bill of complaint, this defendant prays to be hence dismissed with his reasonable costs in this behalf expended.

THOMAS J. PETER.

MARKS & MASSIE,
*Sol's for Def't*s, *T. J. Peter.*

Before me, J. W. Dimmick, clerk of the circuit court of the United States for the middle district of Alabama, this day personally appeared Thomas J. Peter, who, being by me first duly sworn, doth state on oath that he is the defendant named in the foregoing answer, and that the statements made in said answer as upon knowledge he knows the same to be true, and when stated on information and belief he verily believes the same to be true.

J. W. DIMMICK,
Clerk U. S. Circuit Court.

Filed Jan. 2, 1888.

J. W. DIMMICK, *Clerk.*

173 *Answer of Jno. G. Murray.*

In the Circuit Court of the United States for the Middle District of Alabama, in the Fifth Judicial Circuit. In Equity.

The separate answer of John G. Murray, a defendant, to the bill of complaint exhibited in said court by R. S. Hollins and others under the firm name of Hollins, Sons & Company and Thomas D. Fite and others under the firm name of Fite, Porter, Lyle and Company against the City National Bank of Selma and this defendant and others.

This defendant, reserving to himself the benefit of exception to

the errors and defects in said bill of complaint contained, for answer to said bill of complaint or so much thereof as he is advised it is material for him to answer, alleges and responds:

SECTION 1. That on or about the 4th day of May, 1882, said Brierfield Coal and Iron Company became and was duly organized and incorporated by that name with a capital stock of seven hundred and fifty thousand dollars, in accordance with the statutes of the State of Alabama, to wit, article one, chapter one, title one, part second of the Code of Alabama, made and provided for the creation of manufacturing, mining, and industrial business corpora-
174 tions and the like, and was and became invested with all the rights, privileges, powers, and franchises conferred by law on such corporations, and became and was domiciled and had its principal office and place of business in Bibb county, Alabama, and that afterwards, by an act of the General Assembly of Alabama entitled "An act to amend and ratify the charter of the Brierfield Coal and Iron Company of Bibb county, Alabama," the charter of said company was duly amended and ratified.

SECTION TWO. This defendant is informed and believes and so states that in pursuance of a call in that behalf duly made and after and in pursuance of more than thirty days' notice of the time, place, and purposes thereof duly given by publication in a newspaper of general circulation published in said county of Bibb, and in accordance with all the requirements of the law in that behalf made and enacted, the stockholders of said company met and assembled in general convention in said town of Brierfield, in Bibb county, Alabama, on September 1st, 1882, for the purpose of considering and acting upon a proposition to authorize the creation of a bonded indebtedness of said company to the extent of five hun-
175 dred thousand dollars and the execution of a proper mortgage deed of trust on the property, real and personal, of said company to secure the amount thereof; that at said convention all the stockholders in said company were present in person or by proxy, and all the stock of said company was then and there duly represented, and said stockholders' convention, by vote and resolution duly and unanimously made and adopted, then and there authorized and directed the creation of said bonded indebtedness and the making and execution of said mortgage deed of trust of the date, tenor, and effect hereafter designated. On September 1st, 1882, said Brierfield Coal and Iron Company duly executed the mortgage deed of trust to Preston B. Plumb, as trustee in the said bill of complaint referred to and described, in pursuance of the power and authority in it in that behalf vested by law and by the direction and authority aforesaid of its stockholders in general convention assembled,
176 and also by authority of the board of directors, duly given by a resolution of said board authorizing the president of said board, for and on behalf of the same, to execute that identical mortgage deed of trust, which was then and there copied and set out in full on the minutes of the proceedings of said board; that the corporate name of said Brierfield Coal and Iron Company was subscribed to said mortgage deed of trust in execution thereof by

Thomas J. Peter as and who was then and there the president thereof, and the common seal of said company was attached thereto and attested by John G. Murray, this respondent, as and who was then and there the secretary thereof, and said mortgage deed of trust was duly subscribed by said Preston B. Plumb as trustee, who then and there and ther-y accepted the trusteeship thereof, and as therein conveyed and created; that the execution of said mortgage deed of trust was duly acknowledged by said company, by and through the said Thomas J. Peter as the president thereof, in said Bibb county, before J. W. Mahan, who was then and there a justice of the peace in and for said county, who duly certified the acknowledge-
177 ment on September 27, 1882. Said mortgage deed of trust was shortly thereafter duly recorded in the counties of Bibb, Chilton, and Shelby, in the State of Alabama, as appears by copy thereof attached to said bill of complaint, marked Exhibit A, which exhibit is a substantial copy of said mortgage deed of trust.

SECTION 3. That in pursuance of the authority aforesaid for the creation of said bonded indebtedness and in accordance with said mortgage deed of trust the said Brierfield Coal and Iron Company afterwards sold and delivered sundries of its first-mortgage commercial bonds, each of the denomination of one thousand dollars, each dated October 1st, 1882, payable to said trustee or bearer, at the office of said company, in the city and State of New York, on October 1st, 1912, with proper interest coupons attached to each for the payment of the semi-annual interest thereon at the rate of six per centum per annum, and each duly authenticated by the certificates of said trustee endorsed thereon, and each of the form and tenor more particularly set forth and described in and by
178 said mortgage deed of trust; but this defendant cannot state without reference to the books of said company the number of bonds so issued nor to whom except as hereinafter stated.

SECTION 4. This defendant is informed and believes and so states that afterwards and in accordance with the provisions of said original mortgage deed of trust, for further assurance in the premises, said Brierfield Coal and Iron Company, on, to wit, the 29th day of July, 1887, for the purpose of further securing the payment of said 500 bonds in said original mortgage deed of trust mentioned, executed and delivered to said Preston B. Plumb, as trustee, another mortgage deed of trust bearing date the 28th day of July, 1887; that this said last-mentioned deed of trust was duly authorized by the board of directors of said company in and by a resolution of said board duly adopted at a regular meeting thereof and entered in the minutes of the proceedings of said board, and the same was duly executed by said company by and through said Thomas J. Peter as and who was then president thereof, and the common seal of said company was duly attached thereto by the secretary thereof, and the execution of said deed of trust was duly attested by two
179 witnesses subscribing, and the same was shortly thereafter duly probated and recorded in the counties of Bibb, Shelby, & Chilton, Alabama, wherein was and is situated said property, as ap-

pears in and by a copy thereof to said bill of complaint attached, marked Exhibit A, and the same is a substantial copy.

SECTION 5. On August 1st, 1887, said Preston B. Plumb, as such trustee, under and in accordance with the provisions, authority, and power in said mortgage deed of trust contained, and on account of the defaults of said company in the premises, demanded possession of all the property included in said mortgage deed of trust, and on August 2, 1887, said Plumb, as such trustee, with the consent of said company, took actual possession of all of said property and has ever since held actual possession thereof, and so had possession when this bill was filed as such trustee under and by virtue of said deed of trust; and this defendant is advised by counsel and avers and believes that by reason of the premises and the terms, provisions, operation, and effect of said mortgage deed of trust all the property of said Brierfield Coal and Iron Company, real and personal, both that owned by it at the date of the same and that subse-
180 quently acquired, including choses in action, franchises, credits, balances due on unpaid subscriptions to capital stock, and all other items and things whatsoever of value, are granted, conveyed, and pledged to said trustee and his successors in trust as a trust fund to secure the payment of said first-mortgage bonds, according to the tenor and effect of the same.

SECTION 6. At the time of the filing of said bill of complaint this defendant was and still is the *bona fide* possessor and holder for value of eight of said first-mortgage bonds of said Brierfield Coal & Iron Company duly executed, authenticated, and issued by said company for full value, the serial numbers of which bonds are respectively as follows: 283, 371, 372, 373, 446, 447, 448, & 449.

This defendant purchased said bond numbered 283, of the denomination of one thousand dollars, on or about the 23d day of November, 1883, and paid therefor the sum of nine hundred dollars in cash to said Brierfield Coal and Iron Company. This defendant further avers that said Brierfield Coal and Iron Company, on or about March 10, 1887, obtained a loan of about twenty-five hundred dollars from the Commercial
181 Bank of Selma, and for the payment thereof executed its note on March 10th, 1887, in the sum of twenty-five hundred dollars, payable at said bank six months after the date thereof, and on or about the 18th day of March, 1887, obtained a loan from said bank of a like amount and executed its note for twenty-five hundred dollars, payable at said bank six months after the date thereof, and the money so obtained was received by said company and used by it in the payment of the debts of said company lawfully and legitimately incurred; and defendant avers that at the request of said company and purely for its accommodation he became endorser of and did endorse each of said notes when the same were respectively made and executed; that when this defendant so become endorser on said notes said company promised and agreed to secure him against all loss and damage by reason thereof and in pursuance thereof, and then and there gave, delivered, and pledged to this defendant as security to him the following of its first-mort-

gage bonds, each of the denomination of one thousand dol-
182 lars, to wit, bonds numbered respectively 371, 372, 373, 446, 447, 448, 449, being seven in number; and this defendant avers that each of said notes are long past due, and that this defendant, as endorser, has paid the said note for $2,500.00, dated March 10th, 1887, above described, and is still endorser and liable on the other said note, which is still wholly unpaid.

SECTION 7. And this defendant is informed and believes and so states that each and all of said bonds above described and so held by this defendant was originally issued by said Brierfield Coal and Iron Company for the full value and in due and regular course of business, and this defendant acquired and became the purchaser of each of said bonds so held or owned by him in good faith and in the usual and regular course of business for a then present valuable consideration, paid and furnished by this defendant as hereinbefore set out, and without any knowledge, information, or notice of any of the matters or things in said bill of complaint alleged against said bonds or said mortgage deeds of trust or either, and without any knowledge, information, or notice of any kind or any defect in or defense to said bonds or any of them, in whole
183 or part, if any such there be, or of any invalidity, defect, or infirmity whatsoever, in law or in equity, in said bonds or any of them or in the title thereto acquired by this defendant, if any there be; and this defendant alleges and avers that for the amount of said bonds so held by this defendant, according to the tenor and effect thereof, — is invested, has, and holds a first lien on all the property of the said Brierfield Coal and Iron Company of every kind and description, real and personal, choses in action, franchises, credits, unpaid stock subscription, and all the property of said company prior to and superior to any and all other rights thereto and liens thereon whatsoever, except the rights and liens of other holders of bonds of the same issue, who are *bona fide* holders thereof for value, and except such liens as may exist thereon for unpaid purchase-money of real estate, if any there be.

SECTION 8. That this defendant is over the age of twenty-one years and resides in the county of Bibb, in the State of Alabama, and is a stockholder in said Brierfield Coal and Iron Company, and owns six shares of stock thereof, of the par value of one
184 hundred dollars each, which said stock was lawfully, regularly, and duly issued by said company to this defendant, who paid therefor in cash at the time he acquired the same the full par value thereof.

SECTION 9. This defendant, for further answer to said bill of complaint, says, to the best of his knowledge, information, and belief, the following is a correct statement of the names of the stockholders of said company, the amount of stock held by each, and the names of stockholders owing for unpaid stock subscriptions in and to said company and the amount thereof:

Justin S. Morrill holds ten thousand dollars of stock, upon which he has paid the sum of six thousand two hundred & seventy dollars; Mrs. C. S. Plumb holds ninety-nine thousand dollars of stock, upon

which she has paid the sum of forty-three thousand eighty-nine & $\frac{78}{100}$ dollars; Mrs. Esther A. Peter holds fifty thousand dollars of stock, for which she has paid the sum of fifty thousand dollars; this defendant holds six hundred dollars of stock, for which he paid six hundred dollars; upon his subscription of fifteen thousand dollars, C. C. Huckabee has paid the sum of twenty-one hundred and sixty-six dollars; upon his subscription of five thousand
185 dollars, Robert L. McCalley has paid the sum of five thousand dollars; upon his subscription of one hundred and twenty thousand dollars, Thomas J. Peter has paid the sum of eighty-three thousand six hundred and forty & $\frac{85}{100}$ dollars; upon this subscription of seventy-five thousand dollars, George I. Seney and associates have paid the sum of forty thousand three hundred & fifty-five dollars.

SECTION 10. This defendant verily believes and avers and states that *that* it is not true, as averred in said bill of complaint, that by an agreement made between the stockholders of said company prior to the organization thereof or at any other time it was understood and agreed that the said bonds were to be distributed after the organization of said company or at any other time among the stockholders thereof without any consideration, according to the amount of stock they might respectively take or hold in said corporation, or upon any other or different arrangement or agreement of like character; and this defendent denies that the said $500,000.00 of said bonds or any part thereof were, pursuant to said agree-
186 ment or to any like agreement or arrangement, issued and distributed amongst the said stockholders without any other or further consideration; and this defendant denies that the said corporation has received no value for the said bonds; but, on the contrary, this defendant avers that all said bonds issued by said corporation were regularly, duly, and lawfully issued in good faith and in the regular course of business and for full present value and consideration received or paid to it; but defendant avers that even if said allegations of said bill were true this defendant had no notice or knowledge thereof at the time he acquired said bonds and is not effected thereby.

SECTION 11. This defendant denies that said bonds and said mortgage deeds of trust are fraudulent and void as against the complainants in said bill of complaint and the other creditors of said corporation or any of them; but, on the contrary, defendant avers that said bonds and mortgages give and constitute higher and prior and superior rights to those of said creditors and complainants; and this defendant further denies that said Preston B. Plumb took possession of said property and filed his bill of complaint *or*
187 either for the purpose of hindering, delaying, defrauding said complainants and the other creditors of said corporation or any of them or for any like purposes; but defendant believes and states that said trustee filed his said bill of complaint for the purposes in the same set out.

SECTION 12. This defendant avers that, to the best of his knowledge, information, and belief, the following persons and corporations

hold and own the said bonds of said corporation issued under form and authority hereinbefore set out and secured by said mortgaged deed of trust, as follows:

Samuel Thomas, who resides in the city of New York, State of New York, holds 27; Geo. I. Seney, who resides in the city of New York, State of New York, holds 40; Calvin S. Brice, who resides in the city of New York, State of New York, holds 3; Justin S. Morrill, who resides at Strafford, in the State of Vermont, holds 11; Mrs. M. S. Pomeroy, who resides in Washington, D. C., holds 9; Mrs. C. S. Plumb, who resides at Emporia, Kansas, holds 100; Mrs. Esther A. Peter, who resides in Waukesha county, State of Wisconsin, holds 218; John G. Murray, this defendant, who resides at
188 Brierfield, in the State of Alabama, holds 8; J. T. Fitzgerald, who rosides at Marion, Ala., holds 20; the Alabama National Bank of Birmingham, Ala., holds 9; the City National Bank of Selma, Ala., holds 28; the Commercial Bank of Selma, Alabama, hold- 27. This defendant admits that the Brierfield Coal and Iron Company is indebted to plaintiffs in the sum named in their bill of complaint. This defendant expressly denies all allegations of fraud and fraudulent intent charged in said bill of complaint, and all allegations of fact contained in said bill and not expressly admitted in this answer are denied, and strict proof is required.

And now, having fully answered said bill of complaint, or so much thereof as he is advised it is material for him to answer, this defendant, John G. Murray, prays to be hence discharged with his reasonable costs in this behalf expended.

JOHN G. MURRAY.
MARKS & MASSIE,
Sol's for Jno. G. Murray.

John G. Murray, being duly sworn, deposes and says that the allegations in the foregoing answer and statements therein contained, when stated of his own knowledge, are true, and when stated on information and belief he believes the same to be true.

——.

Sworn to and subscribed before me this 8th day of December, A. D. 1877, by said John G. Murray.

S. R. SHEPHERD, *J. P.*

Filed Jan. 2, 1888.

J. W. DIMMICK, *Clerk.*

189 *Order Making Wm. L. Chandler Defendant in This Suit Instead of P. B. Plumb.*

In the Circuit Court of the U. S. for the Middle District of Alabama.

HOLLINS *et al.*
vs.
BRIERFIELD COAL & IRON CO. *et al.*

In this cause it being made to appear that the defendant, Preston

P. Plumb, as trustee of the Brierfield Coal and Iron Company, has in another cause pending in this court tendered his resignation as such trustee, which resignation has been accepted, and William L. Chambers having been made trustee in his stead, and said Chambers as such trustee making application to be admitted to defend in this cause in the name of and stead of said Preston B. Plumb, as such trustee, and to be made party defendant herein, it is therefore ordered that the said Wm. L. Chambers, as such trustee, be made party defendant in this cause in the place and stead of said Preston B. Plumb, as trustee. It is further ordered that said William L. Chambers, as such trustee, be allowed thirty days from this date in which to plead, answer, or demur to the bill of complaint in this cause, as he may be advised.

JOHN BRUCE, *Judge.*

Jan'y 2, '88.

Filed Jan. 3, 1888.

J. W. DIMMICK, *Clerk.*

190 *Separate Answer — The Brierfield Coal & Iron Company.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & Co. and Others, Complainants,
vs.
THE BRIERFIELD COAL & IRON CO. and Others, Defendants. } In Equity. 107.

The separate answer of The Brierfield Coal and Iron Company, one of the defendants, to the bill of complaint of E. S. Hollins, Sr., and R. S. Hollins, Jr., John Dickinson, and John A. Hollins, trading as copartners under the firm name of Hollins, Sons & Co., and others, complainants.

This defendant, saving and reserving to itself all right and benefit of exception to the said bill of complaint, for answer thereto, or to so much and such parts thereof as it is advised is material to answer, says:

SECTION 1. That this defendant neither admits nor denies that it is indebted to the complainants in the amounts as alleged in said bill of complaint, but believes such indebtedness to be as therein set forth.

SECTION 2. That this defendant states that on or about the 4th day of May, A. D. 1882, the said Brierfield Coal and Iron Company became and was duly organized and incorporated in and
191 by that corporate name, and with a capital stock of $750,000.00, under and in accordance with the statutes of the State of Alabama, set forth and contained in article 1st, chapter 1st, title 1st, and part second, of the Code of Laws of said State, made and provided for the creation of manufacturing, mining, and industrial business corporations, and became and was invested with all the rights,

powers, franchises, and privileges conferred by law on corporations of that class, and became and was domiciled and had its office and principal place of business at Brierfield, in the county of Bibb, in this State, and that afterwards, by virtue of an act of the General Assembly of Alabama entitled "An act to amend and ratify the charter of the Brierfield Coal and Iron Company, of Bibb county, Alabama," approved Dec. 12th, 1884, the charter of said corporation was amended and ratified accordingly; that in accordance with the rights conferred on it by law it regularly opened its books of subscription to its capital stock, and that the subscriptions to the capital stock of said company were as follows:

T. J. Peter and associates	$120,000 00
E. A. Peter	50,000 00
192 R. L. McCalley	5,000 00
C. C. Huckabee	15,000 00
G. I. Seeney and associates	75,000 00
C. S. Plumb	50,000 00
Plumb & Hood	50,000 00
Justin S. Morrill	10,000 00

That on said stock subscription T. J. Peter paid to said company the sum of $83,640.85, and became surety for said company, for money borrowed for the use of said company and actually used in its business, as accommodation indorser, for the sum of $102,417.60; that E. A. Peter paid in cash $50,000, the full amount of her subscription to the capital stock; that said R. L. McCalley has paid in property the sum of five thousand dollars on his subscription to the said capital stock; that the said C. C. Huckabee has paid in property the sum of $2,166.00 on his subscription to the capital stock of said company; that on the subscription to the capital stock subscribed in the name of G. I Seneey and associates there has been paid to said company the sum of $23,745.00 by Samuel Thomas, and the sum of eight hundred and ten dollars by Calvin S. Brice, and the sum of $22,800.00 by G. I. Seney.

192½ That on the subscription to the capital stock made in the name of C. S. Plumb and Plumb & Hood there has been paid to said company the sum of $43,089.78 by C. S. Plumb; that on the subscription of Justin S. Morrill made to the capital stock of said company there has been paid to said company the sum of $6,270.00.

That after the organization of said company John G. Murray purchased six shares of the capital stock of said company, and paid said company therefor the sum of six hundred dollars in cash.

193 SECTION 3. And this defendant states that in pursuance of a call in that behalf duly made, and after and in pursuance of more than thirty days' notice of time and place and purposes thereof, duly given by publication in a newspaper of general circulation published in said county of Bibb, and in accordance with all the requirements of law in such cases the stockholders of the said Brierfield Coal and Iron Company met and assembled in general convention at the office of said company, at Brierfield, Alabama, on the 1st day of Sep-

tember, A. D. 1882, for the purpose of considering and acting upon the proposition to authorize the creation of a bonded indebtedness of said company to the extent of $500,000.00 and the execution of a proper mortgage deed of trust on the property, real and personal, of said company to secure the payment of said bonded indebtedness; that at said convention all the stockholders of said company were present, in person or by proxy, and all the stock thereof was duly represented, and that said stockholders' convention, by vote and resolution duly and unanimously adopted, then and there au-
194 thorized and directed the creation of said bonded indebtedness and the making and the execution of said mortgage deed of trust, of the date, tenor, and effect hereinafter designated; that on the said first day of September, 1882, the said Brierfield Coal and Iron Company duly executed the mortgage deed of trust to Preston B. Plumb, as trustee in the bill of complaint referred to and described, in pursuance of the power and authority aforesaid of its stockholders in general convention assembled, and also by authority of the board of directors of said company, duly given by a resolution of said board of directors, authorizing the president of said company, for and on behalf of the same, to execute the identical mortgage deed of trust, which was then and there copied and set out in full on the minutes of the proceedings of the said board of directors.

That the corporate name of said Brierfield Coal and Iron Company was subscribed to said mortgage deed of trust in execution
195 thereof by Thomas J. Peter as — who then was the president thereof, and the common seal of said corporation was attached thereto by John G. Murray, and the same was attested by said John G. Murray as and who then was the secretary thereof; and the said mortgage deed of trust was duly subscribed by the said Preston B. Plumb, as trustee, who thereby accepted the trusts therein and thereby created.

That the execution of said mortgag- deed of trust was duly acknowledged by said company by and through the said Thomas J. Peter, the president thereof, in said Bibb county, before Jesse W. Mahan, who was then and there a justice of the peace in and for said county, and who duly certified the acknowledgement thereof on the 27th day of September, 1882.

That said mortgage deed of trust was shortly after the execution thereof duly recorded in the counties respectively of Bibb, Chilton, and Shelby, as appears by the copy thereof attached to the said bill of complaint and marked "Exhibit A," and that said "Exhibit A" sets forth and contains a substantial copy of the said mortgage deed of trust.

SECTION 4. That in pursuance of the direction and authority aforesaid for the creation of such bonded indebtedness of said
196 company, and under and in accordance with said mortgage deed of trust, the said Brierfield Coal and Iron Company afterwards duly executed, sold, and delivered sundry of its first-mortgage bonds, each of the denomination of $1,000.00, and each bearing date the 1st day of October, A. D. 1882, and each payable to the said trustee or bearer or purchaser, at the office of said com-

pany, in the city and State of New York, on the first day of October, A. D. 1912, with the proper interest coupons attached to each for the payment of the semi-annual interest thereon, at the rate of six per cent. per annum, and each duly authenticated by the certificate of the said trustee endorsed thereon, and each of the form, tenor, and effect more particularly set forth and prescribed in and by said mortgage deed of trust.

Said bonds were sold for cash to the following parties and in the following amounts for not less than ninety per centum of their par value and the accrued interest, which money was received by the Brierfield Coal and Iron Company and used in the purchase and development of this property and in its legitimate business,
197 namely:

Thomas J. Peter, seventy-one (71) bonds.
Esther A. Peter, two hundred and fifteen (215) bonds.
Carrie S. Plumb, ninety-nine (99) "
Justin S. Morrill, eleven (11) "
Samuel Thomas, forty (40) "
G. I. Seney, forty (40) "
Calvin S. Brice, three (3) "
John G. Murray, one (1) "
C. C. Huckabee, thirteen (13) "

There were seven bonds unsold, which were delivered to John G. Murray as collateral for two loans of twenty-five hundred dollars each made by him from the Commercial Bank of Selma, which money was received by the Brierfield Coal and Iron Company and used in its legitimate business.

SECTION 5. And this defendant states that afterwards and in accordance with the provisions of said original mortgage deed of trust, for further assurances in the premises, the said Brierfield Coal and Iron Company on, to wit, the 29th day of July, 1887, for the purpose of further securing the payment of the five hundred bonds in the original mortgage deed of trust mentioned, executed and delivered to the said Preston B. Plumb, as trustee, another mort-
198 gage deed of trust, bearing date the 29th day of July, 1887; that the said last-mentioned deed of trust was duly authorized by the board of directors of said company in and by a resolution of said board of directors duly adopted at a regular meeting thereof and entered on the minutes of the proceedings of said board, and the same was duly executed by said company by and through Thomas J. Peter as and who then was the president thereof, and the common seal of said corporation was thereto attached and duly attested by the secretary thereof, and the execution of said mortgage deed of trust was also duly attested by two subscribing witnesses, and the same was shortly afterwards probated and duly recorded in the said counties, respectively, of Bibb, Chilton, and Shelby (wherein was and is situated the property, real and personal, thereby granted and conveyed), as appears in and by the copy of said last-mentioned mortgage deed of trust attached to the bill of complaint, marked Exhibit "A," and that said "Exhibit A" sets

204 *Demurrer of The Brierfield Coal & Iron Company, Thos. J. Peter, & Jno. G. Murray.*

In the Circuit Court of the United States for the Middle District of Alabama, in the Fifth Judicial Circuit.

HOLLINS, SONS & CO. *et al.*
vs.
THE BRIERFIELD COAL & IRON COMPANY *et als.*
} In Equity. 107. Nov. Term, 1887.

Demurrer of the Brierfield Coal and Iron Company, Thomas J. Peter, and John G. Murray, to the bill of complaint in above-stated cause.

These defendants, by protestation, not confessing or acknowledging all or any part of the matters in said bill of complaint to be true in the manner and form as therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth the following:

1st. That said complainants have not by their said bill of complaint made such a case as entitles them in a court of equity to any relief from or against these defendants touching the matters contained in the said bill or any of said matters; wherefore, and for divers other good causes of demurrer appearing in the

205 said bill of complaint, these defendants demur to the said bill and to all the matters and things therein contained, and humbly prays the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill, and they pray to be hence dismissed with their reasonable costs in this behalf expended.

THE BRIERFIELD COAL
AND IRON COMPANY,
THOMAS J. PETER,
JOHN G. MURRAY,
By MARKS & MASSIE,
Their Solicitors.

We hereby certify that, in our opinion, the foregoing demurrer of the Brierfield Coal and Iron Company, Thomas J. Peter, and John G. Murray to the bill of complaint of Hollins, Sons & Co. *vs.* The Brierfield Coal and Iron Company *et als.* is well founded in law and proper to be filed in the above-stated cause.

MARKS & MASSIE,
Sol's for The Brierfield Coal & Iron Co., Thomas J. Peter, John G. Murray.

206 UNITED STATES OF AMERICA,
Middle District of Alabama.

Thomas J. Peter, as president of the Brierfield Coal and Iron Company and individually, and John G. Murray, being by me duly sworn, depose and say that they have read the foregoing demurrer

to the bill of complaint in this suit, and that the same *are* not interposed for the purpose of delaying said suit or any proceedings therein.

THOMAS J. PETER.
BRIERFIELD COAL AND IRON COMPANY,
By T. J. PETER, *President.*
JNO. G. MURRAY.

Sworn to and subscribed before me this 3d day of January, 1888.
J. B. JEMISON,
Notary Public.

Filed Jan. 14, 1888.
J. W. DIMMICK, *Clerk.*

207 *Demurrer of W. L. Chambers, Trustee, to the Original Bill.*

In the Circuit Court of the United States for the Middle District of Alabama, in the Fifth Circuit. In Equity. Nov. Term, 1887.

HOLLINS, SONS & CO. *et als.*
vs.
THE BRIERFIELD COAL & IRON COMPANY *et als.* } 107.

Demurrer of W. L. Chambers, as trustee, to the bill of complaint of Hollins, Sons & Co. *et als.*, complainants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur thereto, and for cause of demurrer showeth the following, to wit: 1st. That said complainants have not by their said bill made such a case as entitles them in a court of equity to any relief from or against this defendant touching the matters contained in the said bill or any of said matters. Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur to the said bill and to all the matters and things contained, and humbly
208 prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and he prays to be hence dismissed with his reasonable costs in this behalf sustained.

W. L. CHAMBERS, *Trustee,*
By THORINGTON & SMITH, *His Sol's.*

We certify that in our opinion the foregoing demurrer of W. L. Chambers, trustee, to the bill of complaint of Hollins, Sons & Co. *vs.* The Brierfield Coal & Iron Company *et als.* is well founded in law and proper to be filed in the above cause.

THORINGTON & SMITH,
Sol's for the Defendant, W. L. Chambers, Trustee.

UNITED STATES OF AMERICA,
Middle District of Alabama.

W. L. Chambers, being duly sworn, doth depose and say that he has read the foregoing demurrer to this bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

W. L. CHAMBERS.

Sworn to & subscribed to before me this 4th day of Feb'y, 1888.

J. C. STRATFORD,
Notary Public.

Filed the 4th day of Feb., 1888.

J. W. DIMMICK, *Clerk.*

209 *Separate Answer & Plea of W. L. Chambers.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS *et als.*
vs.
BRIERFIELD C. & I. Co. *et als.* } 107.

The separate answer of W. L. Chambers, as trustee of the Brierfield Coal and Iron Company, to *this* bill of complaint in this cause.

This respondent avers that heretofor-, to wit, on the — day of ——, a bill was filed in this court by Preston B. Plumb, as trustee, against The Brierfield Coal and Iron Company *et als.* as defendants, seeking a foreclosure of the mortgage mentioned in the bill in this cause, and for an account of the amounts due from the stockholders in the Brierfield Coal and Iron Company on their stock subscriptions to the capital stock of said Co., and to enforce the payment of the same, which bill is still pending in this court and is numbered 103 on the equity side of the docket.

That said Plumb resigned his position as trustee, which resignation was accepted by this court, and this respondent was appointed by this court as trustee in lieu and stead of said Plumb on,
210 to wit, the — day of ——, 1887, and respondent accepted said appointment and entered upon the discharge of the duties thereof and is still acting as such trustee; that all the transactions and matters set up in the bill of complaint happened and occurred long before this respondent had any connection with or information *with* the business or affairs of said Brierfield Coal and Iron Company, and that respondent has no personal knowledge of any of said matters.

Respondent is informed and believes and on such information and belief avers that the said corporation was created as alleged in the bill, and its stock subscribed for as therein set forth; that the charter of said company was amended and ratified by an act of the

General Assembly of Alabama approved Dec. 12, 1884, entitled An act to amend and ratify the charter of the "Brierfield Coal and Iron Company of Bibb County, Alabama." Respondent is unable to state the exact amount of stock that is unpaid and due from each subscriber, but, on information and belief, states the subscribers, respectively, paid the following amounts, viz:

211 T. J. Peter, $83,640.85; E. A. Peter, $50,000.00; R. L. McCalley, $5,000.00; C. C. Huckabee, $2,166.00; Geo. I. Seney, $22,800.00; Samuel Thomas, $23,745; C. S. Brice, $810.00; C. S. Plumb, on account of subscriptions in her name and that of Plumb and Hood, $43,089.78; J. S. Morrill, $6,270. Respondent is informed and believes and so avers that the said C. S. Plumb claims that the subscription of Plumb & Hood and for herself was made for her benefit, but respondent knows nothing of the facts and neither admits nor denies the allegation in the bill that such subscription was for said Preston B. Plumb, and demands proof thereof. Respondent on information and belief admits the issue of the bonds and execution of the mortgage described in the bill, but on like information and belief he denies that said bonds either were to be or were in fact distributed among the stockholders without consideration, as stated in the bill, but on information and belief respondent avers that said corporation received ninety per cent. of the face value of said bonds therefor, which was all that said bonds were worth.

212 Respondent on information & belief admits that said company continued its operations until August, 1887, and that during that time it paid to the holders of said bonds some of the interest on said bonds, but on like information and belief respondent denies that said company — all the interest thereon, but avers on information and belief that the said company made default in the payment of interest on said bonds prior to August, 1887; on information and belief respondent admits that about August 1st, 1887, the said Preston B. Plumb took possession of the property and effects of said company by his agent, Jno. G. Murray, and that said company delivered said property to said Plumb, but on information and belief respondent avers that said Plumb took possession thereof as trustee under the power conferred and in strict accordance with the terms of the mortgages mentioned in the bill; and the respondent, further answering, says that this respondent is now in possession of all of said property by virtue of his appointment as trustee by this court; respondent admits the filing of the bill by said Plumb and the answer by the Brierfield Coal & Iron Co.,

213 as charged in the bill. Respondent, having no knowledge on the subject, neither admits nor denies the indebtedness of said company to complainants and others, but demands strict proof thereof. Respondent denies, on information and belief, that said Plumb took possession of said property or filed said bill with the purpose of hindering, delaying, or defrauding any of the creditors of said company, but on such information and belief avers that he took such possession and filed said bill for the *bona fide* purpose of protecting said property from waste and ruin and to preserve the same and to enforce the payment of the bonds which were secured

by the said mortgage; and respondent avers that he, as the successor in the trust of said Plumb, is holding such property and conducting said cause now.

On information and belief respondent denies that said Preston B. Plumb owes anything for stock in said Co., and admits his non-residence. Respondent, on information and belief, denies that said company has ceased to exercise or has disabled itself from exercising its corporate functions. On like information and belief
214 respondents admits the holders of said bonds to be as stated in the bill. Respondent also, on such information and belief, admits the indebtedness of said company to said City National Bank of Selma, and said Commercial Bank of Selma, and to said Alabama National Bank of Birmingham, and that said debts are each secured by a deposit of bonds, as stated in the bill. Respondent admits that W. D. & Kearsley Carter, Jr., claim a lien by virtue of a mortgage on certain of the property of said company, as stated in the bill.

Respondent cannot state how much said company has invested in property nor how much it claims to have so invested. On information and belief respondent avers that the stockholders severally paid to said company on their stock the amounts hereinbefore stated to have been paid by them, and that they paid for said bonds the *the* price hereinbefore stated to have been paid, and that said company paid to the holders of said bonds interest thereon, but how much was so paid this defendant cannot state. Respondent cannot state whether or not the mortgage property will realize
215 enough to pay the bonds secured by said mortgage. Respondent avers, on advice and information and belief, that the unpaid subscriptions of the capital stock of said company are embraced in and pass by said mortgage, and that the said bondholders have a first lien thereon for the payment of said bonds. Respondent admits, on information, that the unpaid subscriptions to said capital stock amounts to about the sum of one hundred and twenty-five thousand dollars, and the debts of said company which are unsecured to the amount of about ——.

And that said Plumb claims not to be liable for any part of such subscriptions and that he is a non-resident.

Respondent avers, on information and belief, that said bonds and mortgages were issued and executed in all respects in strict accordance with the laws of the State of Alabama on that subject and are valid; and this respondent, for further answer to the bill of complaint in this cause by way of a plea, says, on advice, information, and belief, that the suit mentioned in said bill as having been
216 commenced in this court by said Plumb as complainant against the said Brierfield Coal and Iron Company and others as defendants is still pending in this court, and was pending when the bill in this cause was filed, and that said suit of said Plumb embraces all the matters embraced in this suit and others, and that all the defendants to this suit are parties to said Plumb suit, and that all the relief sought in this suit can be had as fully and completely in said Plumb suit; and defendant prays the judgment of this

court on his plea, and, having fully answered, prays to be hence dismissed.

THORINGTON & SMITH,
Sol's for Resp't.

UNITED STATES OF AMERICA, *Middle Dist. of Alabama,* } ss:

Before the undersigned, a commissioner of the circuit court of the United States for said middle district of Alabama, comes W. L. Chambers, trustee, &c., and, being first duly sworn, upon oath says that the statements as of facts as set forth in the foregoing answer are true, & those stated on information and belief he believes to be true.

W. L. CHAMBERS.

Sworn to and subscribed before me this 3d day of August, 1888.

J. W. DIMMICK,
U. S. Cir. Court Com'r.

Filed the 6th day of Aug., 1888.

J. W. DIMMICK, *Clerk.*

217 *Clerk's Certificate as to Filing of Bill, &c.*

HOLLINS, SONS & COMPANY and Others
vs.
THE BRIERFIELD COAL AND IRON COMPANY and Others. } 107.

I, J. W. Dimmick, clerk of the United States circuit court, hereby certify that the original bill in the above-stated case was filed in my office on the 28th day of October, A. D. 1887, and sworn to, and in said bill the names and residences of the parties named in the order of publication are as set out in the order of publication.

In testimony whereof I have hereunto set my hand and — this the 29th day of October, A. D. 1887.

[SEAL.] J. W. DIMMICK,
Clerk of the U. S. Circuit Court for the Middle District of Alabama.

Filed Nov. 1, 1887.

J. W. DIMMICK, *Clerk.*

218 *Petition of Jasper N. Campbell.*

Circuit Court of the United States in and for the Middle District of Alabama.

HOLLINS, SONS & Co. *et als.*
vs.
THE BRIERFIELD COAL AND IRON COMPANY *et als.* } In Chancery. 107.

General creditor's bill.

The petition of Jasper N. Campbell, who is a resident citizen of Tuscaloosa county, State of Alabama, respectfully shows that on the

—— he entered into a contract with the defendant in the above-entitled cause, The Brierfield Coal and Iron Company, to sink a slope for mining coal upon the property of said company, the said slope to be sunk six hundred and fifty feet, and to be paid for at the rate of five dollars per foot; that by the terms of said contract it was understood that the work should be measured up each month and paid for as the work progressed, at the rate above stated, the company to retain fifteen per cent. of the amount due for each month until the completion of the work, as its security for the completion of the same, the sums thus retained to be paid to your petitioner upon the completion of the slope and the acceptance of the same by the company,

219 Petitioner further states that the said slope was completed by him under his said contract the full distance of six hundred and fifty feet on or about the 24th day of December, 1886, and was by him turned over to and accepted by said respondent, The Brierfield Coal and Iron Company, and that from that time to the present it has been used for mining coal by said company and by the receiver appointed by this honorable court, and is at present being used by said receiver in mining coal. Petitioner further states that the said respondent company reserved and held back of the amounts due your petitioner for said work and labor the following sums for each month, to wit:

On settlement for	March,	1886		$36 00
" "	" April,	"		39 00
" "	" May,	"		30 75
" "	" June,	"		31 50
" "	" July	"		74 25
" "	" August,	"		60 75
" "	" September	"		67 50
" "	" October	"		69 75
" "	" November	"		56 25
" "	" December	"		68 00
	Making the total amount thus reserved			$533 75

220 That said sum of five hundred and thirty-three dollars and seventy-five cents, with interest thereon from the 24th day of December, 1886, is now due to your petitioner from the said Brierfield Coal and Iron Company on account of the labor and work done and performed by him under his said contract in sinking said slope.

Petitioner therefor prays that he may be permitted to make himself a party complainant in the bill filed in this cause as a general creditor's bill, and upon proof of his claim, in such manner as the court may direct, be permitted to share in the benefits of said proceedings and of any decree that may be rendered therein; and said petitioner hereby offers as a condition of his so doing to be responsible for and contribute his due share and proportion of the costs and expenses of said suit.

JASPER N. CAMPBELL.

Sworn to and subscribed before me this 11th day of April, A. D. 1888.

A. W. McCULLOUGH,
Clerk U. S. C. C.

CHAS. TURNER,
Sol. for Petitioner.

Rec'd and filed the 13th day of Apr., 1888.

J. W. DIMMICK, *Clerk.*

221 *Affidavit of A. T. London.*

In the Circuit Court of the United States, Middle District of Alabama.

HOLLINS, SONS & Co. *et al.*
vs.
THE BRIERFIELD COAL & IRON COMPANY *et al.* } 107.

Before me, Benj. P. Seals, a commissioner of affidavits in and for said district, personally appeared Alexander T. London, one of the solicitors of complainants in the above-entitled cause, who, being duly sworn, says that T. J. Peter, the former president of the defendant corporation, on the request of the complainants, has produced certain books of account of said corporation; that complainants have caused the same to be examined by an expert accountant with the assistance of affiant, and from the books so furnished and examined it is impossible to arrive at the condition of the said corporation of the true state of the accounts of the several stockholders thereof; that from the said books it is impossible to ascertain the sources from which moneys were derived or the purpose for which moneys were paid, and that in order to enable complainants to ascertain how much money was paid and by whom and the
222 accounts on which the same were paid by the several stockholders and bondholders, and how much was paid to the several stockholders and bondholders on account of interest or on other accounts by the said defendant corporation during its operations, it will be necessary that the said T. J. Peter be required to produce before the special commissioner all of the books of account of every kind and description, and also all bank books, check books, bills payable and receivable during the operation of the defendant corporation.

ALEX. T. LONDON.

Sworn to and subscribed before me this 20th day of April, 1889.

BENJ. P. SEALS,
U. S. Com'r, Mid. Dist. of Ala.

Filed the 20th day of Apr., 1889.

J. W. DIMMICK, *Clerk.*

223 *Affidavit of Clerk as to Publication of Notice to Non-Resident Defendants.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

HOLLINS, SONS & Co. Others
vs.
BRIERFIELD COAL AND IRON COMPANY and Others. } 107.

Before me, Benjamin P. Seals, a commissioner of affidavits in and for said court, personally appeared J. W. Dimmick, clerk of said court, who, being duly sworn, deposes and says that he caused to be inserted in the Daily Dispatch, a newspaper published in the city of Montgomery, once a weeks for six consecutive weeks, the following notice:

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

HOLLINS, SONS & Co. and Others
vs.
BRIERFIELD COAL AND IRON COMPANY and Others.

Now come the solicitors of the complainants and move the court for an order of publication to the said Preston B. Plumb, Carrie S. Plumb, Justin S. Morrill, George I. Seney, Calvin S. Brice, Samuel Thomas, M. S. Pomeroy, and Laura E. Williams, the non-resident defendants mentioned in said bill; and it appearing to the court that the said Preston B. Plumb and Carrie S. Plumb reside at Emporia, in the State of Kansas, and the said Justin S. Morrill
224 resides at Strafford, in the State of Vermont, and the said George I. Seney, Calvin S. Brice, and Samuel Thomas each reside- in the city and State of New York, and said Laura E. Williams resides at Cincinnati, in the State of Ohio, and M. S. Pomeroy resides at Washington, in the District of Columbia, and that personal service upon them is not practicable, it is therefore ordered and decreed by the court that the clerk of this court do forthwith make publication to each of them in the Daily Dispatch, a public newspaper published in the city of Montgomery, Ala., once a week for six consecutive weeks, requiring each of them to appear and plead, answer or demur, to the bill of complaint in this cause within thirty days after said period of six weeks shall expire, or that at the next rule day after said period of thirty days shall expire a decree *pro confesso* will be rendered against each of them upon said bill of complaint, and all the allegations of said bill of complaint as against them to be taken as confessed; and the clerk of this court will mail to each of them one copy — said newspaper containing said order of publication, properly directed to each of them, at their places of resi-

dence aforesaid, postage prepaid, marking said notice of pub-
225 lication with ink, so as to call the attention of said above-named defendants thereto.

Witness Honorable Morrison R. Waite, Chief Justice Supreme Court of the United States, this the 1st day of November, 1887.

J. W. DIMMICK, *Clerk.*

And affiant further says that he caused a copy of the said paper containing said notice to be mailed to each of said defendants at their several places of residence, postage paid, and marked as required in said order of publication.

J. W. DIMMICK.

Sworn to and subscribed before me this 28th day of February, 1888.

BENJ. P. SEALS,
U. S. Commissioner, Middle District of Alabama.

Filed the 18th day of May, 1888.

J. W. DIMMICK, *Clerk.*

226 *Decree Pro Confesso as to Non-Residents, &c.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

HOLLINS, SONS & CO. and Others
vs.
BRIERFIELD COAL AND IRON COMPANY & Others. } 107.

MAY 18TH, 1888.

In the above-entitled cause it being made to appear to the satisfaction of the court that the publication of the order against the absent defendants, Preston B. Plumb, Carrie S. Plumb, Justin S. Morrill, George I. Seney, Calvin S. Brice, Samuel Thomas, M. S. Pomeroy, and Laura E. Williams, has been duly made as required by said order and the performance of the directions contained in said order, and the said defendants named having failed to appear, demur, plead, or answer to the bill of complaint herein:

Now, on motion of solicitors for complainants, it is considered by the court that the said bill of complaint be taken as confessed as to the said defendants, Preston B. Plumb, Carrie S. Plumb, Justin S. Morrill, George I. Seney, Calvin S. Brice, Samuel Thomas, M. S. Pomeroy, and Laura E. Williams.

May 8th, 1888.

JOHN BRUCE, *Judge.*

Filed & entered the 18th day of May, 1888.

J. W. DIMMICK, *Clerk.*

227 *Decree Overruling Demurrer, &c.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

HOLLINS, SONS & CO. *et al.*
vs.
THE BRIERFIELD COAL AND IRON COMPANY *et al.* } 107.

This cause came on to be heard on the demurrers of the defendants; and, the same having been argued by counsel and understood by the court, it is considered by the court that the said demurrers be, and the same are hereby, overruled, and the defendants are required to answer the bill of complaint within thirty days after the date of this decree.

The said cause being further heard, on the motion of complainants for a receiver, said motion being argued by counsel and understood by the court, it is considered by the court that the complainants are not entitled to a receiver as prayed for.

May 25, '88.

JOHN BRUCE,
Judge Presiding.

Filed the 25th of May, 1888.

J. W. DIMMICK, *Clerk.*

228 *Answer of Seney, Thomas, & Brice.*

Circuit Court of the United States, Middle District of Alabama.

HOLLINS, SONS & CO. *et al.*, Complainants,
vs.
THE BRIERFIELD COAL AND IRON COMPANY *et al.*, Defendants. } No. 107.

The joint and separate answer of George I. Seney, Samuel Thomas, and Calvin S. Brice to the original bill of complaint in this cause exhibited against these defendants and others.

These defendants, saving and reserving to themselves all right and benefit of exception to the said bill of complaint, for answer to so much and such part thereof as they are advised is material to answer, says:

SECTION 1. These defendants do not know and are not informed, except by said bill of complaint, as to the alleged indebtedness of said Brierfield Coal and Iron Company to the complainants. They do not admit such indebtedness and, if material to their defense in this cause, require proof thereof.

SECTION 2. These defendants are informed and believe and state that on or about the 4th day of May, 1882, the said Brierfield Coal

and Iron Company became and was duly organized and in-
229 corporated in and by that corporate name and with a capital stock of $750,000.00 under and in accordance with the statutes of the State of Alabama set forth and contained in article 1st, title first, and part second of the Code of Laws of said State, made and provided for the creation of manufacturing, mining, and industrial business corporations, and became and was invested with all the rights and powers, franchises, and privileges conferred by law on corporations of that class, and became and was domiciled and had its office and principal place of business at Brierfield, in the county of Bibb, in this State, and that afterwards, by virtue of an act of the General Assembly of Alabama entitled "An act to amend and ratify the charter of the Brierfield Coal and Iron Company of Bibb County, Alabama," approved December 12th, 1884, the charter of said corporation was amended and ratified accordingly.

SECTION 3. And these defendants are informed and believe and so state that, in pursuance of a call in that behalf duly made, and
230 after and in pursuance of more than thirty days' notice of time and place and purposes thereof duly given by publication in a newspaper of general circulation published in said county of Bibb, and in accordance with all the requirements of law in such cases, the stockholders of said Brierfield Coal and Iron Company met and assembled in general convention at the office of said company, at Brierfield, Alabama, on the 1st day of September, 1882, for the purpose of considering and acting upon the proposition to authorize the creation of a bonded indebtedness of said company to the extent of $500,000.00 and the execution of a proper mortgage deed of trust on the property, real and personal, of said company to secure the payment of such bonded indebtedness; that at said convention all the stockholders of said company were present in person or by proxy and all the stock thereof was duly represented, and that said stockholders' convention, by vote and resolution thereof duly and unanimously adopted, then and there authorized and directed the creation of said bonded indebtedness and execution of said mortgage
231 deed of trust of the date, tenor, and effect hereinafter designated; that on said first day of September, 1882, said Brierfield Coal and Iron Company duly executed the mortgage deed of trust to Preston B. Plumb, as trustee in the bill of complaint referred to and described, in pursuance of the power and authority in it in that behalf vested by law and by the direction and authority aforesaid of its stockholders in general convention assembled, and also by authority of the board of directors of said company duly given by a resolution of said board authorizing the president of said company for and on behalf of the same to execute the identical mortgage deed of trust, which was then and there copied and set out in full on the minutes of the proceedings of said board; that the corporate name of said Brierfield Coal and Iron Company was subscribed to said mortgage deed of trust in execution thereof by Thomas J. Peter as and who then was the president thereof, and the common seal of said corporation was attached thereto by John G. Murray,
232 and the same was attested by said John G. Murray as and

who then was the secretary thereof, and said mortgage deed of trust was duly subscribed by said Preston B. Plumb, as trustee, who thereby accepted the trusts therein and thereby created; that the execution of said mortgage deed of trust was duly acknowledged by said company by and through said Thomas J. Peter, the president thereof, in said Bibb county, before Jesse W. Mahon, who was then and there a justice of the peace in and for said county, who duly certified the acknowledgement thereof on the 27th day of September, 1882; that said mortgage deed of trust was, shortly after the execution thereof, duly recorded in the counties respectively of *of* Bibb, Chilton, and Shelby, as appears by the copy thereof attached to the said bill of complaint and marked "Exhibit A," and that said "Exhibit A" sets forth and contains a substantial copy of said mortgage deed of trust; that in pursuance of the direction and authority aforesaid for the creation of such bonded indebtedness of said company, and under and in accordance with said mortgage deed of
233 trust the said Brierfield Coal and Iron Company afterwards duly executed, sold, and delivered sundry of its first-mortgage commercial bonds, each of the denomination of $1,000.00, each bearing date the first day of October, A. D. 1882, each payable to said trustee, or bearer, at the office of said company, in the city and State of New York, on the first day of October, 1912, with the proper interest coupons attached to each for the payment of the semi-annual interest thereon, at the rate of six per cent. per annum, and each duly authenticated by the certificate of the said trustee endorsed thereon and each of the form, tenor, and effect more particularly set forth and prescribed in and by said mortgage deed of trust; but these defendants do not know the number of bonds so issued nor the persons to whom nor the circumstances under which the same were issued, except as hereinafter stated and set forth.

SECTION 5. And these defendants believe, and so state, that afterwards and in accordance with the provisions of said original
234 mortgage deed of trust, for further assurances in the premises, the said Brierfield Coal and Iron Company on, to wit, the 29th day of July, 1887, for the purpose of further securing the payment of the 500 bonds in the original mortgage deed of trust mentioned, executed and delivered to the said Preston B. Plumb, as trustee, another mortgage deed of trust, bearing date the 29th day of July, 1887; that the said last-mentioned deed of trust was duly authorized by the board of directors of said company in *in* and by a resolution of said board and duly adopted at a regular meeting thereof and entered on the minutes of the proceedings of said board, and the same was duly executed by said company by and through Thomas J. Peter as and who then was president thereof, and the common seal of said corporation was thereto attached and duly attested by the secretary thereof, and the execution of said deed of trust was also duly attested by two subscribing witnesses, and the same was shortly afterwards probated and duly recorded in said counties, respectively, of Bibb, Chilton, and Shelby.

235 Wherein was and is situate the property, real and personal, thereby granted and conveyed, as appears in and by the copy of said last-mentioned mortgage deed of trust attached to the bill of complaint, marked "Exhibit A," and that said "Exhibit A" sets forth and contains a substantial copy of said last-named mortgage deed of trust.

SECTION 6. And these defendants are informed and believe and so state that on, to wit, the 1st day of August, 1887, the said Preston B. Plumb, as such trustee, under and in accordance with the terms and provisions in said mortgage deed of trust in that behalf contained and on account of the defaults of said Brierfield Coal and Iron Company in the premises, demanded possession of all the property, real and personal, included in or covered by said mortgage deeds of trust or either of them, and that on, to wit, the 2d day of August, 1887, the said Plumb, as such trustee, with the consent of said company, took actual possession of all of said property, real and personal, and has ever since held possession of said property and so had
236 possession of said property when this bill was filed, as such trustee, under and by virtue of said mortgage deed of trust. And these defendants are advised, believe, and aver that by reason of the premises and the terms, provisions, operation, and effect of said mortgage deed of trust all of the property of said Brierfield Coal and Iron Company, real and personal, both that owned by it at the date of the original mortgage deed of trust and that since acquired, including choses in action, rights, franchises, and credits, balances due on unpaid subscriptions to capital stock and all items and things whatsoever of value, is granted, conveyed, and pledged to said trustee and his successor or successors in trust as a trust fund to secure the payment of said first-mortgage bonds according to the tenor and effect thereof.

SECTION 7. These defendants are owners of capital stock of said Brierfield Coal and Iron Company as follows: Said George I. Seney owns four hundred shares; the said Samuel Thomas owns four hundred shares, and the said said Calvin S.
237 Brice owns thirty shares; on this stock these defendants have paid in money as follows: George I. Seney on his stock, $22,800; Samuel Thomas on his stock, $23,745, and Calvin S. Brice on his stock, $810. These defendants deny that they were or are liable for any balance on their said stock. If, however, it should be determined by the court that there is any balance due by them on said stock they claim the right to pay off and discharge such liability by crediting the amount due them on the said bonds with the said balance.

These defendants purchased of said Brierfield Coal and Iron Company eighty-three of its first-mortgage bonds — follows: George I. Seney, forty; Samuel Thomas, forty, and Calvin S. Brice, three. Said bonds were secured by and issued under said mortgage and deed of trust, for which they paid in cash to said company nine hundred dollars for each bond and at the rate of ninety cents on the dollar. All of said bonds were duly issued and authenti-
238 cated and were purchased by these defendants in good faith

and without any knowledge, notice, or information of any defect or infirmity therein, if any such there be; and defendants allege that the said price paid by them for said bonds was reasonable and fair and more than said bonds could have been negotiated and sold for in the market.

8. These defendants aver that they became the purchasers of said bonds so sold by them respectively in good faith and in the usual and regular course of business for a then present and valuable consideration paid and furnished by them respectively and without any knowledge, information, or notice of any of the matters and things in said bill of complaint alleged against said bonds or said mortgage deeds of trust or either of them and without any knowledge, information, or notice of any defense to said bonds or any of them, in whole or in part, if any such there be, or of any invalidity, defect, or infirmity whatsoever, in law or in equity, in said bonds or any of them, if any
239 such there be; and these defendants are advised and informed and believe and so state that for the payment of the said bonds, according to the tenor and effect thereof, they are invested with a first lien on all the property of the Brierfield Coal and Iron Company of every kind and description, real or personal, including rights, franchises, credits, choses in action, and any and all accounts and balances due from its stockholders on account of unpaid subscriptions to stock, prior and superior to all and any other rights thereto and liens thereon whatsoever, except the rights and liens of holders of other bonds of the same issue, who are *bona fide* purchasers thereof for a valuable consideration, if any such there be, and except such liens for purchase-money, if any there be, as may have been reserved by the vendors of particular property purchased by said Brierfield Coal and Iron Company.

9. For further answer to said bill of complaint defendants say they deny that said bonds so held by them as aforesaid or
240 any of them were issued by said Brierfield Coal and Iron Company to any of its stockholders without consideration or for less than the face or nominal value thereof, as alleged in said bill, and aver that on the contrary thereof said bonds held by them were issued and negotiated by said company for full and valuable consideration.

They deny that said bonds held by them or the said mortgage deeds of trust or either of them are fraudulent and void as against the complainant in said bill or the creditors of said company or any other person, and aver that said bonds and the said mortgage deeds of trust are each and all valid, binding, and operative, according to their tenor and effect respectively, to all intents and purposes.

They deny that it required the vote of two-thirds in value of the stock of said Brierfield Coal and Iron Company to authorize the execution of said mortgage deed of trust, as in said bill alleged, and aver that — the statutes governing this class of corporations to which said company belongs a majority in value of said stock,
241 at most, was sufficient to authorize the execution thereof. They say it is not true, as alleged in said bill, that the notice of the meeting of the stockholders of said company required by

law to authorize the execution of said original mortgage deed of trust was not given, and aver that due notice for more than thirty days of the time and place and purposes of said meeting was given in all respects as required by law in such cases. They say it is not true, as alleged in said bill, that not two-thirds in value of the stock of said corporation voted to authorize the execution of said mortgage deed of trust, and that, on the contrary thereof, though the vote of the majority of said stock in value would have been sufficient therefor, as a matter of fact the said stockholders' convention, by the unanimous vote of the entire stock of said corporation, all of which was then and there present, represented, and voted, authorized the creation of said bonded indebtedness and the execution of said mortgage deed of trust. They deny that the complainants are entitled to have the benefit of the unpaid subscription
242 to the capital stock in the bill mentioned and described applied to the payment of their claims in priority to or on an equality with the claims of these defendants, and aver that the rights and lien of these defendants and other holders of said bonds in like situation, if any there be, upon said balances, as upon all other property of said company, are paramount to any rights of complainants in the premises; and defendants further say that at the time of the creation of said bonded debt and the execution of said mortgage deed of trust the said Brierfield Coal and Iron Company, under and by virtue of its charter and the laws of the State, possessed and was invested with the power to make, issue, and sell said bonds and to execute said mortgage deeds of trust to secure the payment of the same, and that said company, by and through its constituted officers and agents, exercised that power, and that the bonds so issued and secured became and were and are commercial paper and entitled to the faith and credit and clothed with the immunities attached by — law of the land to such paper, and that the right and title of these defendants as *bona fide* pur-
243 chasers for value and without notice are and remain wholly unaffected by any defects or irregularities, whether of act or omission, of said officers and agents in or about the exercise of the power aforesaid, if any such defects and irregularities in fact there were.

Any averments or statements of fact in said bill contained not specifically denied by the foregoing answer and which may be inconsistent with the averments of fact contained in the answer are hereby denied and proof thereof required; and, having fully answered said bill of complaint, these defendants pray to be hence dismissed with their reasonable costs in this behalf expended.

HUMES, WALKER, SHEFFEY & GORDON,
Solicitors for Def'ts, Thomas, Seney, & Brice.

STATE OF NEW YORK, }
City and County of New York. }

Before me, S. F. Sullivan, a notary public in and for said State, city, and county, personally appeared George I. Seney, who is known

to me and who, being duly sworn, says that he is one of the defendants making the foregoing joint and separate answer; that the allegations of said answer are true except so far as the same are stated to be alleged upon information and belief, and such allegations he verily believes to be true.

GEORGE I. SENEY.

Sworn to and subs. before me this 9th day of October, 1888.
[SEAL.] S. F. SULLIVAN,
Notary Public, Kings Co.

Filed in office this 20th day of Oct., 1888.
J. W. DIMMICK, *Clerk.*

244 *Replication.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. *et al.*
vs.
THE BRIERFIELD COAL AND IRON COMPANY *et al.* } 107.

The replication of Hollins, Sons & Co. and Fite, Porter, Lyle & Co. to the answer of Commercial Bank of Selma, City National Bank, W. D. & K. Carter, Jr., C. C. Huckabee, E. A. Peter, J. G. Murray, Brierfield Coal & Iron Co., T. J. Peter, W. L. Chambers, Samuel Thomas, Calvin S. Brice, and George I. Seney, defendants.

These repliants, saving and reserving unto themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answers, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

TOMPKINS, LONDON & TROY,
Comp'ts Sol's.

Filed the 10th day of Dec., 1888.
J. W. DIMMICK, *Clerk.*

245 *Petition of Milner & Kittig to be Made Parties Comp't.*

HOLLINS, SONS & CO.
vs.
THE BRIERFIELD COAL AND IRON COMPANY. } 107.

To the Hon. John Bruce, judge of the U. S. court, &c.:

Milner and Kittig, a firm composed of Willis J. Milner, H. Key Milner, and William H. Kittig, respectfully represent unto your honor that they are creditors of the said Brierfield Coal and Iron Company in the sum of $884.37, and they ask leave to file their account in this court against said company, and they further ask that their said claim be considered along with other claims against the said The Brierfield Coal and Iron Co.; and as in duty bound they will ever pray, &c.

B. K. COLLIER,
Att'y for Milner & Kittig.

Account.

BIRMINGHAM, ALA., *Jan'y 1st*, 1889.

Brierfield Coal & Iron Co., Brierfield, Ala., to Milner & Kittig, Dr.

1887.
Aug. 1. To amount as per statement rend..... $884 37
With interest from date.

Affidavit to Account.

STATE OF ALABAMA, }
Jefferson County. }

Before me, C. R. McCullough, a notary public in and for said county and State, personally appeared I. W. Walter, book-keeper for Milner & Kittig, who, being duly sworn, says on oath that the above account is correct, due, and unpaid, to the best of his knowledge and belief.

I. W. WALTER.

Sworn and subscribed before me this 10th day of Jan'y, 1889.

C. R. McCULLOUGH, *N. P.*

Filed the 17th day of Jan., 1889.

J. W. DIMMICK, *Clerk.*

246 *Order Appointing W. M. Lindsay Special Examiner.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

HOLLINS, SONS & CO.
vs.
BRIERFIELD COAL AND IRON COMPANY *et al.* } 107.

In this cause, on motion of complainants, it is ordered that William M. Lindsay, of the city of Birmingham, Ala., be, and he is hereby, appointed special examiner in this case to take orally the testimony of the following-named witnesses, or such of them as complainants may see fit to examine in their behalf, namely, C. C. Huckabee, John G. Murray, T. J. Peter, W. D. Carter, W. L. Chambers, and R. L. McCalley, and that said examiner be, and he is hereby, authorized and empowered to subpœna said witnesses to come in person before him and to produce and bring with them such books, instruments, accounts, and records pertaining to the matters in controversy as may be asked for by complainants or their solicitors of record & may be in the possession, custody, or control of any of said witnesses, at such time and place as he may see fit, and to make all such other or further orders as may be necessary & proper to enable him to execute the duties of such examiner.

247 It is further ordered that in examining said witnesses, on giving notice to the parties to this cause of the time and place of examining said witnesses, & in all other matters pertaining to the taking of said testimony such examiner shall be governed by and conform to the rules of this court relative to such matters. It is further ordered that said examiner shall have until the 15th day of April, 1889, in which to take the testimony of the above-named witnesses, or the testimony of said witnesses Murray & Peter may be taken before B. P. Seals, at Montgomery, Alabama, who is hereby appointed examiner for that purpose.

Done in open court this the 19th day of January, 1889.

JOHN BRUCE, *Judge.*

Filed Jan. 19, 1889.

J. W. DIMMICK, *Clerk.*

Order Appointing B. P. Seals Special Examiner to Take Testimony, &c.

HOLLINS, SONS & CO. & Others
vs.
BRIERFIELD COAL & IRON COMPANY & Others. }

On motion of E. W. Pettus, solicitor for the Commercial Bank of Selma, the City National Bank of Selma, James T. Fitzgerald, and Esther A. Peters, defendants in this suit, it is ordered that B. P. Seals, Esqr., be, and he is hereby, appointed special examiner to take

the evidence of Thomas J. Peter — John G. Murray as witnesses for the above-named defendants.

Jan'y 18, '89.

JOHN BRUCE, *Judge.*

Filed the 19th day Jan., 1889.

J. W. DIMMICK, *Clerk.*

248 *Order Appointing B. P. Seals Special Examiner to Take Testimony of All the Witnesses in the Cause.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & Co. & Others
vs.
BRIERFIELD COAL & IRON COMPANY & Others. } 107.

On motion of Alex. T. London, one of the solicitors for complainants in the above-entitled cause, it is ordered that Benjamin P. Seals, Esqr., be, and he is hereby, appointed special examiner to take the evidence of all such witnesses as may be produced before him by any of the parties to said cause.

May 11, '89.

JOHN BRUCE, *Judge.*

Filed the 11th day of May, 1889.

J. W. DIMMICK, *Clerk.*

Order Appointing Fred. O. Bull, Special Examiner, &c.

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & Co. & Others
vs.
BRIERFIELD COAL & IRON COMPANY & Others. } 107.

On motion of counsel for the respective parties in the above-enti-led cause, it is ordered that Fred. S. Bull, Esqr., be, and he is hereby, appointed special examiner to take the evidence of all such witnesses as may hereafter be produced before him by any of the parties to said cause.

June 3d, '89.

JOHN BRUCE, *Judge.*

Filed June 3, '89.

J. W. DIMMICK, *Clerk.*

249 *Petition of Higdon and McCary.*

UNITED STATES OF AMERICA,
Middle District of Alabama.

Circuit Court.

HOLLINS, SONS & Co. *et al.*
vs.
THE BRIERFIELD COAL & IRON COMPANY *et al.* } 107.

To the Hon. John Bruce, judge:

Your petitioners, Elijah L. Higdon and James H. McCary, would respectfully represent to your honors:

Your petitioners are both citizens of Birmingham, Alabama, and are partners in business under the firm name and style of Higdon and McCary, and are both over twenty-one years of age. The Brierfield Coal and Iron Company, a body corporate, respondent in this cause, is indebted to petitioners by account due the first day of August, 1886, in the sum of one hundred and sixteen dollars and eighty-one cents, with interest on the same from the said first day of August, 1886, a statement of which account, verified by oath, is attached to this petition, marked "Exhibit A," and made a part of the same; said Brierfield Coal and Iron Company is further indebted to petitioner by note due the tenth day of November, 1887,
250 in the sum of three hundred and fifty-eight dollars and sixty-two cents, with interest from said tenth day of November, 1887, which note is attached to this petition, marked "Exhibit B," and made a part of the same; said Brierfield Coal and Iron Company is further indebted to petitioners by note due the twenty-fifth day of November, 1887, in the sum of three hundred and fifty-three dollars and eighty-eight cents, with interest from said twenty-fifth day of November, 1887, which note is attached to this petition and marked "Exhibit C" and made a part thereof; said notes were made payable to E. S. Higdon & Co., and by said E. S. Higdon & Co. indorsed to petitioners; said Brierfield Coal and Iron Company is further indebted to petitioners by an accepted bill of exchange due the first day of August, 1887, in the sum of three hundred and eighty-eight dollars and *and* thirty-three cents, with interest on the same from said first day of August, 1887, which bill of exchange is attached to this petition, marked Exhibit C, and made a part of the same. Hollins, Sons & Co. and others have heretofore filed their bill in this cause praying for certain relief for themselves and such others, being creditors of said Brierfield Coal and Iron Co., as
251 may file claims or otherwise show themselves *intitled* to relief.

The premises considered, peti-oners pray such process, if any, as may be due respondents or either of them issue to inform them or either of them of the filing of this petition and claim, and that upon the hearing of this cause petitioners be let into and decreed to share

in whatever relief may be decreed to said parties complainant, so far as the facts above set out show them entitled to such relief, and all general relief and such special relief as they may be entitled to be decreed to them.

BEN. CARTER,
Solicitor for Petitioners.

Brierfield Coal & Iron Co. in Ac. with Higdon & McCary.

DR.

1886.				
May	2.	Mdse.		80
"	3.	"	3	85
"	4.	"	24	45
"	7.	"	16	75
	9.	"	8	60
	17.	"	32	86
	24.	"	18	25
June	1.	"	2	25
	8.	"	2	75
	17.	"	9	10
	30.	"	2	
July	5.	"	4	35
	21.	"	15	25

CR.

June	30.	Mdse.			24 45
		Balance			116 81
			141	26	141 21

1886.
Aug. 1. Balance due Higdon & McCary 116 81

252 UNITED STATES OF AMERICA, }
Northern District of Alabama. }

Before me, Samuel S. Thompson, a United States commissioner for the northern district of Alabama, this day appeared James H. McCary, who makes oath and deposes that he is a member of the copartnership of Higdon & McCary, and that the above account, to the best of his information, knowledge, and belief, is just and correct, includes all proper offsets and credits, and is still unpaid.

JAMES H. McCARY.

Sworn to and subscribed before me on this 9th day of May, 1889.

SAMUEL THOMPSON,
U. S. Commissioner.

$358.62. BRIERFIELD, ALA., *June* 1, 1887.

On November 10th —, after date we promised to pay E. L. Higdon

& Co. or order three hundred fifty-eight $\frac{62}{100}$ dollars, value received, at Alabama National Bank, Birmingham, Ala.

Due ——.

BRIERFIELD COAL & IRON CO.,
By T. J. PETER, *President.*

The above note is endorsed on the back thus: Brierfield Coal and Iron Co. Nov. 13th. 358.62. E. L. Higdon & Co. Higdon & McCary.

This paper was taken up by the endorser-, Higdon & McCary, and should not have be-n marked as against the makers.

Nov. 12, '87.

FIRST NAT. B'K,
By W. J. CAMERON, *Pres't.*

253 $353.88 BRIERFIELD, ALA., *June 1st*, 1887.

On November 25th, —, after date we promise to pay E. L. Higdon & Co. or order three hundred fifty-three and $\frac{88}{100}$ dollars, value received, at Alabama National Bank, Birmingham, Ala.

Due ——.

BRIERFIELD COAL & IRON CO.,
By T. J. PETER, *Pres't.*

Endorsement on back of above note: Brierfield Coal and Iron Co. Nov. 25–28. 353.88. E. L. Higdon & Co. Higdon & McCary.

388.33. BRIERFIELD, ALA., 2, *16th*, 1887.
August 1st, 1887.

Higdon & McCary.

Pay to the order of Higdon & McCary three hundred and eighty-eight $\frac{33}{100}$ dollars at Alabama National Bank, Birmingham, Ala., value received, and charge the same to the account of Brierfield Coal and Iron Co., Birmingham, Ala.

HIGDON & McCARY.

(Written across the face in red ink :) Accepted. Brierfield Coal & Iron Company, by T. J. Peter, pres't.

Endorsement of above note: Brierfield C. & I. Co. Aug. 1–4. 388.33. Higdon & McCary. This note paid and taken up by Higdon & McCary and not by the Brierfield C. & I. Co. Thomas M. Bradley, ass't C. Filed the 3rd of June, 1889. J. W. Dimmick, clerk.

254 *Petition of Nabors & Morrow.*

UNITED STATES OF AMERICA,
Middle District of Alabama.

Circuit Court.

HOLLINS, SONS & CO. *et al.*
vs.
BRIERFIELD COAL & IRON CO. *et al.* } 107.

Petition of Francis D. Nabors and George M. Morrow, former partners in business under the firm name and style of Nabors & Morrow.

To the Hon. John Bruce, judge:

Your petitioners would humbly show to your honor:

SECTION 1. Petitioners are both over twenty-one years of age and both citizens of the State of Alabama. They were formerly partners in business under the firm name and style of Nabors & Morrow.

SECTION 2. On the first day of October, 1887, The Brierfield Coal and Iron Company, respondent in this cause, was indebted to petitioner- by account in the sum of fourteen hundred and seventy dollars and thirty-three cents, and said account is still due and unpaid, with interest thereon from said first day of October, 1887. A statement of said account, verified by oath, is attached to this petition, marked "Exhibit A," and made a part of the same.

255 SECTION 3. Hollins, Sons and Company and others have heretofore filed their bill of complaint in this cause against said Brierfield Coal and Iron Company and others, praying for certain relief for themselves and such other parties, being creditors of said Brierfield Coal and Iron Company, as may, before final decree in said cause, to your honor's satisfaction, show themselves entitled to such relief. The premises considered, petitioners pray that such process, if any, as may be necessary and due respondents or any of them issue to inform them of the filing of this petition and claim, and that upon the hearing of said cause petitioners be let into and be decreed to share in whatsoever relief may be decreed to the said parties complainants, so far as the facts above set out show them entitled to such relief, and all general relief and such special relief as they may be entitled to be decreed to them.

BEN. CARTER,
Solicitor for Petitioner-.

256 "EXHIBIT A."

BIRMINGHAM, ALA., *Oct. 1st*, 1887.

Brierfield Coal and Iron Co. to Nabors & Morrow, Dr., drugs and oils, 2012 First avenue.

1885.				
Sept.	1.	To merchandise	109	48
"	5.	"	77	67
Oct.	9.	"	127	52
"	15.	"	66	35
Nov.	13.	"	12	30
"	"	"	46	77
	17.	"	18	87
	23.	"	52	04
	30.	"	35	65
Dec.	9.	"	73	99
"	23.	"	7	50
1886.				
Jan'y	4.	"	156	88
	14.	"	232	00
	22.	"	65	80
	30.	"	101	24
Feb'y	4.	"	86	35
M'ch	5.	"	131	08
	18.	"	6	94
Ap'l	12.	"	87	33
May	1.	"		48
	6.	"	40	03
	10.	"	45	34
			43	61
	27.	"	24	25
June	2.	"	3	28
	16.	"	15	75
July	14.	Amount forward	1,644	25

257 #2.

		Forward	1,644	25
July	14.	Mdse.	16	10
	1.	"	56	60
	7.	"	88	66
	13.	"	36	06
	19.	"	10	95
	"	"	109	51
	27.	"		35
	31.	"	2	70
Aug.	3.	"	4	88
	5.	"	35	20
	2.	"	67	74

Aug.	6.	Mdse.	35	61
	15.	"	10	00
	21.	"		75
Sept.	6.	"	5	20
	14.	"	80	81
	17.	"	4	00
	20.	"	12	00
	9.	"	10	00
	3.	"	81	12
	13.	"	47	41
	17.	"	98	60
	20.	"	24	93
Oct.	8.	"	4	00
	10.	"	209	55
		Amount forward	2,696	98

258 #3.

		Amount forward	2,696	98
Oct.	15.	Mdse.	3	35
	"	"	31	60
	11.	"	23	55
Nov.	2.	"	1	20
	8.	"	106	06
	5.	"	113	75
	"	"	51	42
	"	"	26	25
	12.	"	4	85
	29.	"	36	90
Dec.	10.	"	105	21
	"	"	73	75
	13.	"	19	90
	24.	"	35	39
	31.	"	9	
1887.				
Jan'y	7.	"	116	20
	23.	"	4	50
	"	"	15	66
	10.	"	72	67
	"	"	27	74
	"	"	24	82
	14.	"	15	27
	24.	"	8	31
Feb'y	8.	"	11	50
	11.	"	4	00
		Amount forward	3,658	08

259

4.

1887.		Amount forward	3,658 08
Feb'y	18.		2 00
	"		23 15
	23.		32 94
	4.		31 77
	7.		166 68
	25.		26 16
M'ch	1.		21 05
	4.		4 50
	18.		45 45
	7.		115 51
	"		83 78
	"		5 67
	11.		31 24
	18.		25 06
Ap'l	1.		33 96
	22.		4 00
	23.		80
Aug.	10.		484 18
Sept.	10.		487 37
		Amount forward	5,283 15

5.

(CREDITS.)

1885.			Amount forward		5,283 15
Dec.	24.	By cash	546 65		
1886.					
Feb'y	10.	" "	81 49		
March	23.	" "	555 92		
Sept.	9.	" "	484 44		
1887.					
Feb'y	10.	" "	407 37		
"	16.	" "	432 01		
"	28.	" "	85		
Ap'l	12.	" "	1,416 09		
			3,924 82		
		Interest on above ($3,924.82)	293 05		
			4,217 87		
		Interest Dr., $5,283.15	405 05		
					3,812 82
		To balance			$1,470 33

We render a statement of every account on our ledger on the first day of each month, whether it is due or not.

If found correct and due please remit or honor our sight draft on *est.*

Yours respectfully, NABORS, MORROW & CO.

260 UNITED STATES OF AMERICA,
Northern District of Alabama:

Before me, Samuel Thompson, a commissioner of the circuit court of the United States for the northern district of Alabama, this day appeared F. D. Nabors, who, being duly sworn, deposes and says that on the first day of October, 1887, he was a partner in business with George M. Morrow under the firm name and style of Nabors and Morrow, and that the foregoing statement of account due said firm is correct and such account true and just, and said statement shows all proper offsets and credits.

F. D. NABORS.

Sworn to and subscribed before me on this 23d day of May, 1889.
[SEAL.] SAMUEL THOMPSON,
U. S. Commissioner.

Filed the 3rd day of June, 1889.

J. W. DIMMICK, *Clerk.*

261 *Amended Bill of Complaint.*

Circuit Court of the United States for the Middle District of Alabama, in the Fifth Circuit.

To the judges of the circuit court of the United States for the middle district of Alabama, in the fifth circuit, sitting in equity:

The complainants, by leave of court first had and obtained, file the following amended bill of complaint in lieu of the original bill without prejudice:

R. S. Hollins, Sr., R. S. Hollins, Jr., John Dickinson, and John A. Hollins, who are resident citizens of the State of Tennessee, trading as copartners under the firm name of Hollins, Sons & Company; Thomas D. Fite, William Porter, A. G. Porter, W. J. Porter, L. F. Davis, R. J. Lyles, and J. E. Bentley, who are resident citizens of the State of Tennessee, trading as copartners under the name of Fite, Porter, Lyles & Company, who sue as well on behalf of themselves as of all other creditors of the Brierfield Coal and Iron Company who may hereafter come in and contribute to the expenses of this suit, bring this their bill against The City National Bank of Selma, a citizens of said State, a corporation under the laws of the
262 United States, located at and doing business in the city of Selma, Dallas county, Alabama, in said middle district; James T. Fitzgerald and Caswell C. Huckabee, who are citizens of the State of Alabama, and reside in the county of Perry, in said State; The Brierfield Coal and Iron Company, a corporation created and existing under and by virtue of the laws of Alabama, and a citizen of

the State of Alabama; Thomas J. Peter, John G. Murray, W. D. Carter, Kearsley Carter, who are citizens of the State of Alabama, and reside in the county of Bibb, in said State; Robert L. McCally, who is a citizen of Alabama, and resides in Talladega county; The Alabama National Bank, a banking corporation created and organized under the laws of the United States, a citizen of said State of Alabama; The Commercial Bank of Selma, a corporation created and organized under the laws of Alabama, and a citizen of Alabama; M. S. Pomeroy, who is a citizen of the District of Columbia; Preston B. Plumb and Carrie S. Plumb, his wife, who are both citizens of the State of Kansas, residing at Emporia, in said State;
263 Esther A. Peter, wife of Thomas J. Peter, a citizen of Alabama; Justin S. Morrill, a citizen of Vermont, residing at Strafford, in said State; George I. Seney, Calvin S. Brice, and Samuel Thomas, citizens of the State of New York, and Laura E. Williams, a citizen of Ohio, residing at Cincinnati, in said State.

Thereupon your orators complain and say—

That the defendant, The Brierfield Coal and Iron Company, is a corporation organized under the general incorporation laws of Alabama, in the month of May in the year 1882; that the (authorized) capital stock of said corporation was fixed at seven hundred and fifty thousand dollars, and that said corporation was engaged in the manufacture of iron and nails at Brierfield, in the county of Bibb, in the State of Alabama; that the said corporation during the years 1886 and 1887 became indebted to orators' said firm for goods, wares, and merchandise sold by orators at various times, and on the 11th day of February, 1887, the said Brierfield Coal and Iron Company executed and delivered to orators, Hollins, Sons & Com-
264 pany, its two promissory notes, each for the sum of $1,002.13, bearing date the said 11th day of February, 1887, and payable on the 20th day of August and the 20th day of September after date, respectively, at the Commercial Bank of Selma, Alabama, which said notes and interest thereon are now due and payable.

And orators further aver that on the said 11th day of February said Brierfield Coal and Iron Company executed and delivered to the said Hollins, Sons & Company its other promissory note for $1,002.13, bearing date said 11th day of February and payable on the 20th day of October after date, all of which said notes, with the interest thereon, are now due and payable: and afterwards, to wit, on the 17th day of June, 1887, said Brierfield Coal and Iron Company executed and delivered to said Hollins, Sons & Company its two other promissory notes for the sum of $1,172.43 each, one payable on the 3d day of December after date and the other on the 5th day of January, 1888, which said two last-mentioned notes are not yet due and payable.

And orators aver that afterwards, to wit, on the 28th day of February, 1887, said Brierfield Coal and Iron Company was indebted to said Fite, Porter, Lyles & Company for goods,
265 wares, and merchandise theretofore sold and delivered to it by the said Fite, Porter, Lyles & Company, and on said 28th day of February, 1887, said Brierfield Coal and Iron Company exe-

cuted and delivered to said Fite, Porter, Lyles & Company promissory notes bearing date said 28th day of February, 1887, for the amounts and payable as follows: One note for $1,900.85, payable on the first day of September after date; one note for $1,913, payable on the first day of October after date; one note for $1,925.14, payable on the first day of November after date, and one note for $359.40, payable on the 25th day of November after date; and orators aver that said notes due on the first day of September and the first day of October respectively are past due, and with the interest thereon are now due and payable; and orators aver that the said other promissory notes are not yet due and payable.

Orators further aver that the said Brierfield Coal and Iron Company is also indebted to the said Fite, Porter, Lyles & Company upon an account stated for goods, wares, and merchandise
266 sold and delivered to the said company, to wit, the sum of $3,618.72, which said sum with the interest thereon is now due and payable; and orators, on information and belief, aver that the said capital stock was divided into 7,500 shares of the par value of one hundred dollars each; that — the said seven thousand five hundred shares of (authorized) capital stock fifty per cent. thereof, amounting to the sum of three hundred and seventy-five thousand dollars, was subscribed for as follows:

Thomas J. Peter and associates	$120,000 00
E. A. Peter	50,000 00
R. L. McCally	5,000 00
C. C. Huckabee	15,000 00
G. I. Seney and associates	75,000 00
C. S. Plumb	50,000 00
Plumb & Hood	50,000 00
Justin S. Morrill	10,000 00

That of the stock subscribed for by George I. Seney and associates thirty shares thereof, amounting to three thousand dollars, were transferred to Calvin S. Brice and 400 shares thereof, standing in the name of A. O. Beebe, belong to Samuel Thomas; orators aver on information and belief that the stock subscribed for in the
267 name of C. S. Plumb, to wit, $50,000.00, and Plumb & Hood, to wit, $50,000.00, was, in fact, subscribed for by the defendant, Preston B. Plumb, or by his authority.

Orators further aver, on information and belief, that the amount due on said subscription of said several stockholders has never been paid, but whether any part thereof, and, if so, how much, and by whom the same was paid orators do not know. Orators further aver, on information and belief, that at or about the time of the organization of said corporation said Brierfield Coal and Iron Company on, to wit, the first day of September, 1882, pursuant to an agreement made by the said stockholders among themselves, the said Brierfield Coal and Iron Company executed $500,000.00 of bonds, in sums of one thousand dollars each, bearing date the first day of October, 1882, payable on the first day of October, 1912, and bearing interest at six per cent. per annum; and to secure the payment of

the said bonds said corporation executed a mortgage deed of trust to the defendant, Preston B. Plumb, as trustee, on all of its property and effects; that by said agreement so made between the said stockholders prior to (or after) the organization of the said cor-
268 poration it was understood and agreed that the said bonds were to be distributed after the organization of said corporation among the stockholders thereof, without consideration, according to the amount of stock they might respectively take or hold in said corporation or upon some other different arrangement or agreement of like character, the particulars of which orators are unable to state; (that prior to the organization of said corporation the said commissioners or board of corporators opened books of subscription to the capital stock and received the subscriptions to the said capital stock from the persons and in the amounts stated therein, to wit:) In accordance with the order of John S. Gardner, Esq., judge of probate of Bibb county, in the State of Alabama, the undersigned, "as *as* a board of corporators" of the "Brierfield Coal & Iron Company," *the undersigned* gave the notice of the times and places of the opening the books of subscription to the capital stock of the said company, and on May 4th, 1882, at the village of Brierfield, opened books of subscription to the capital stock of said company as follows, and received the following *bona fide* subscriptions:

269 The undersigned respectively subscribe the amounts set op-osite their names to the capital stock of the Brierfield Coal and Iron Company on the terms to be provided by directors:

T. J. Peter, one hundred and twenty thousand dollars;
E. A. Peter, fifty thousand dollars;
C. S. Plumb, fifty thousand dollars;
Plumb & Hood, fifty thousand dollars;
Samuel Thomas & associates, seventy-five thousand dollars;
Justin S. Morrill, ten thousand dollars;
C. C. Huckabee, fifteen thousand dollars;
R. L. McCally, five thousand dollars;

all of which is shown on the books of said corporation produced before the special examiner appointed in this cause.

Orators aver that the original subscription in the name of G. I. Seney and associates is the same as that in the second subscription in the name of Samuel Thomas and associates; that said subscriptions had been made as aforesaid and after the said board of incorporators had reported the said subscriptions to the judge of probate of Bibb county, as required by law; and after said corporation was organized T. J. Peter, president of said corporation, opened
270 other books of subscription, which books of subscription are as follows: In accordance with the resolution adopted by the stockholders of the Brierfield Coal & Iron Company, held at Brierfield on May 4th, 1882, and the direction of the directors held at same place on the evening of the same day, I, T. J. Peter, president of said company, do now receive subscriptions to the capital stock of said company upon the following terms, as required so to do both by the stockholders and directors, for the purpose of raising the sum of four hundred and fifty thousand dollars with which to

purchase certain coal and iron properties; to open and operate coal and iron ore mines; to repair rolling mill; to erect coke ovens and blast furnaces; to produce coal and manufacture coke & iron; to build about five miles of railroad tracks to connect the coal mines, coke ovens, and iron ore banks with the blast furnace and rolling mill.

Now, therefore, the undersigned agree to pay to the said company the amounts respectively set op-osite our names in such sums and at such times as the directors of the said company may require, and to receive from said company for each nine hundred dollars paid in the sum of one thousand dollars in six per cent.
271 mortgage bond of said company and nine hundred dollars in the capital stock of said company, not more than — per centum of each subscription to be called for during one month:

T. J. Peter and associates, one hundred and twenty thousand —.
E. A. Peter, fifty thousand dollars.
R. L. McCally, five thousand dollars.
C. C. Huckabee, fifteen thousand dollars.
G. I. Seney and associates, seventy-five thousand dollars.
C. S. Plumb, fifty thousand dollars.
Plumb & Hood, fifty thousand dollars.
Justin S. Morrill, ten thousand dollars.

And orators aver that the names of the several who appear as subscribers were signed to the said subscription list by the said several persons, or by their duly authorized agents.

And orators aver that the said second books of subscription were opened without any authority in law; and orators further aver the said subscription contract, so far as it authorized the issue of bonds to the subscribers, is contrary to public policy, in violation of the constitution and statutes of the State of Alabama, and void.

And orators, on information and belief, aver that the said $500,000 of bonds were, pursuant to said agreement, issued and dis-
272 tributed among the several stockholders without any other or further consideration than the said agreement, and that the said corporation has received no value for the said bonds; that the said corporation continued its operations until some time in the month of August, 1887; that during all that time the said corporation paid to the holders of said bonds (or some of them) interest thereon semi-annually, according to the tenor thereof. If orators are mistaken in the allegation that the coupons have been paid to the several bondholders, then orators aver that the amount of said coupons, or a large part thereof, as they matured were credited to such of said subscribers as were holders of said bonds on their stock subscriptions.

That on the 29th day of July, 1887, said Brierfield Coal & Iron Company, further to secure said bonds, executed and delivered to the said Preston B. Plumb another and further assurance and mortgage on its property and effects, which said mortgage or deed of trust aforesaid is fully set out; and orators have attached to the original bill copies of said conveyances, marked Exhibit A, and pray

that the same may be taken as a part of this their amended bill, with leave to refer thereto as often as may be necessary.

273 And orators aver that about the time of or soon after the execution and delivery of the said further assurance, marked Exhibit A, the said Brierfield Coal and Iron Company defaulted in the payment of the interest on the said mortgage bonds, and on, to wit, the first day of August, 1887, the said corporation turned over and delivered the whole of its property, machinery, and effects described and set forth in said mortgage deeds of trusts to the said Preston B. Plumb, who, by his agent, the said John G. Murray, has taken possession and control of said property and effects so turned over and delivered; and orators aver that soon thereafter, on, to wit, the 3d day of August, 1887, the said Preston B. Plumb, as such trustee, filed his bill of complaint in this honorable court against the said Brierfield Coal & Iron Company and others, praying your honors to aid him in the administration of the said trust and for other purposes, as will appear by reference to said bill on file in this honorable court; and thereafter, on, to wit, the 11th day of August, 1887, the said Brierfield Coal & Iron Company filed

274 its answer in this honorable court, admitting all the allegations of said bill to be true; and orators ask leave to refer to the record in *in* said cause without attaching a copy thereof hereto as often as may be necessary; and orators aver and charge that the said Brierfield Coal & Iron Company, after its organization, in 1882, became indebted to your orators and other persons, firms, and corporations, and was at the time it turned over its property and effects aforesaid indebted to persons, firms, and corporations, including your orators, in a large sum, to wit, two hundred thousand dollars, or about that sum (and orators are advised, and upon such advice aver and charge, the said bonds so issued by the said corporation were issued without authority of law and in violation of the constitution and laws of the State of Alabama, and are fictitious and void under the said constitution and statutes); and if orators are mistaken in the foregoing allegation orators are advised, and upon such advice aver and charge, that the said bonds and mortgage are fraudulent and void against them and the other creditors of the said Brierfield Coal & Iron Company; and orators verily believe and aver that the said Preston B. Plumb,

275 for the purpose of hindering, delaying, and defrauding orators and other creditors of said corporation, took possession of said property and effects by his said agent and filed the said bill in this honorable court; and orators further aver, on information and belief, that the said Preston B. Plumb is indebted to the said Brierfield Coal & Iron Company on his subscription to its capital stock in a large sum, to wit, fifty-eight thousand dollars or other large sum, and resides out of the jurisdiction of this State, in the State of Kansas; and orators further aver that the said Brierfield Coal & Iron Company since the said first day of August, 1887, has ceased to carry on or exercise its corporate functions, and by the conveyance and surrender of its property and effects has wholly disabled itself from carrying on or performing its corporate functions.

Orators further aver, on information and belief, that the present (holders) of said bonds are as follows: T. J. Peter, 45 bonds; Esther A. Peter, 245 bonds; Carrie S. Plumb, 100 bonds; Samuel
276 Thomas, 27 bonds; George I. Seney, 40 bonds; C. S. Brice, 3 bonds; Justin S. Morrill, 11 bonds; J. T. Fitzgerald, 13 bonds; John G. Murray, 1 bond; Robert L. McCally, 5 bonds; Mrs. M. S. Pomeroy, 9 bonds; that the five bonds of R. L. McCally have not been delivered to him by the said Brierfield Coal & Iron Company.

Orators aver on information and belief that the said Brierfield Coal & Iron Company is indebted to the defendant, The City National Bank of Selma, Alabama, in the sum of fourteen thousand dollars, evidenced by its promissory notes, and to secure the same there *was* pledged to said bank 28 of said bonds of $1,000 each, which said bonds are now held by said bank.

Orators aver on information and belief that the said Brierfield Coal & Iron Company is also indebted to the Commercial Bank of Selma, Alabama, in the sum of twenty-two thousand five hundred dollars, evidenced by its promissory notes, and to secure the payment of the same there *was* pledged to said bank twenty-six of said bonds of $1,000 each.

And orators aver on information and belief that the said Brierfield Coal & Iron Company is also indebted to the Alabama
277 National Bank at Birmingham, in this State, in the sum of eight thousand dollars, evidenced by its promissory notes, and to secure the payment of the same there *was* pledged nine of said bonds of $1,000 each.

Orators further aver that they do not know the circumstances under which said bonds were pledged or hypothecated to the said several banks (and orator- deny that the same are hereby held by them *bona fide*). Orators further aver that W. D. Carter and Kearsley Carter, Jr., claim a lien by virtue of a certain mortgage on certain of the property of the said Brierfield Coal & Iron Company, which is particularly set forth and described in the agreement, a copy of which is attached to the original bill, marked Exhibit B; and orators pray that the same may be taken as a part of this their amended bill of complaint. Orators further aver that they do not know how much is due thereon.

Orators further aver that the said Brierfield Coal & Iron Company pretends that it has invested in its various works and properties the sum of nine hundred thousand dollars; but orators aver that *that* it is not true that they have invested the sum of nine hundred thousand dollars or any sum approximating that amount.

278 And orators, on information and belief, aver the facts to be that the said original subscribers to the capital stock have never paid the original subscription for the same, but are still indebted therefor to the said corporation, and that althoug- the said mortgage bonds were issued without any consideration therefor paid to the said corporation by the said several persons holding the same, who were stockholders in the said Brierfield Coal and Iron Company, the said Brierfield Coal & Iron Company paid the said stockholders the interest on said bonds from time to time, amount-

ing in the aggregate to about the sum of one hundred and fifty thousand dollars. Orators further aver that, from the best information they can obtain, the property and effects conveyed by the said Brierfield Coal & Iron Company to the said P. B. Plumb, trustee, will not realize a sufficient sum to pay the amount of bonds outstanding in case orators are mistaken in regard to the issue of said bonds, and that the only assets or property of the said corporation which would in that event be available for the payment of the creditors of the said Brierfield Coal & Iron Company, including orators,
279 would be the unpaid subscriptions to the capital stock thereof and *each* sums, if any, as may be due and owing to it from other persons, firms, or corporations indebted to it; that, as hereinbefore stated by orators, the said Brierfield Coal and Iron Company has entirely ceased to perform its corporate functions, and that it now pretends and claims that the amount of unpaid subscriptions to its capital stock amounts to about the sum of $125,000.00, while its outstanding debts and liabilities outside of the said mortgage bonds amount to about the sum of $200,000.00, and that the said Preston B. Plumb claims and pretends that he is not liable on account of any subscription to the capital stock of said corporation, and does not reside in the State of Alabama; and orators aver that the said claims and pretenses of the said corporation and of the said P. B. Plumb are not true, but orators aver that unless the affairs and management of the said corporation are placed in the hands of a receiver who shall have power and authority to collect the sums due said corporation from said stockholders and others, and pay over to the said several creditors to whom the said coporation is indebted the several amounts due them, that the same
280 will be wholly lost to orators and the said other creditors; and orators further aver that, by and under the statutes of the State of Alabama in force when said bonds were issued and said first mortgage was executed, before any corporation organized under the general corporation laws of said States could make any mortgage or deed of trust upon any or all of its property, real and personal, it should first give public notice for thirty days in some newspaper published in the county where the said company has its principal place of business of the time, place, and purpose of a meeting of its stockholders to be held to authorize the execution of the said mortgage, and at such meeting it should require the vote of two-thirds in value of all its stock to authorize said mortgage to be made; and orators aver that there was at the time of the execution of the said pretended mortgages or deeds of trust and prior thereto for more than a year a newspaper published in the county of Bibb, where the said Brierfield Coal and Iron Company has its principal place of business; and orators aver, on information and belief, that the said Brierfield Coal & Iron Company never gave the notice of the
281 time, place, and purposes of a meeting of its stockholders to be held to authorize the execution of either of said pretended mortgages or deeds of trust, nor did two-thirds in value of the stock of said corporation vote to authorize the execution thereof; and orators are advised and upon such advice aver that the said pre-

tended mortgages or deeds of trust are wholly void and inoperative to convey any of the property or effects of the said Brierfield Coal & Iron Company or to create a lien thereon.

If orators are mistaken in the foregoing averments, and the notice as required by law was given, and the statutory requirements as to said meeting were complied with, and a majority in value of all of said stockholders met and authorized the issue of said bonds, orators aver that the same were issued without any consideration therefor; and orators further aver that by the statutes of the State of Alabama in force when said bonds were authorized to be issued and the said mortgage was made it was, among other things, provided that no corporation organized under the general corporation laws of said State should issue bonds for more than two-thirds of its capital stock;

282 and orators aver that at the time said meeting was held and since then the capital stock of said corporation has never exceeded the sum of three hundred and seventy-five thousand dollars ($375,000), the amount subscribed for; and orators aver that the issue of the said five hundred thousand dollars of bonds was in violation of the statutes of Alabama, illegal, and unauthorized; and orators aver that each of said persons who own said bonds took the same with full notice and knowledge of such illegality; and orators further aver that some time after the organization of said corporation, to wit, in the year 1886, all of the stockholders of said corporation were informed of the invalidity of said contract of subscription, whereby they were to receive stock and bonds for their subscription as aforesaid, and under which all of said stockholders had received the bonds held by them respectively; and orators aver that the board of directors of said corporation, with full knowledge of the illegality of the issue of said bonds, and knowing that said stockholders, who were also bondholders, had been informed of such illegality, and after said corporation had become insolvent, authorized

283 the execution of the further assurance, which was afterwards and pursuant to such authority executed and delivered to the said P. B. Plumb as trustee, and a copy of which is attached to the original bill filed in this cause and marked Exhibit A, and is prayed to be taken and treated as a part of this amended bill, whereby the said corporation undertook to convey and transfer to said Plumb as such trustee, in addition to all of the other property of every kind and description owned by said corporation, to secure said bonds held by said subscribers as bondholders, all the unpaid stock subscriptions owing and due to said corporation by these same bondholders as stockholders in fraud of the creditors of said corporation.

And orators aver and charge that the said Plumb, when he received said further assurance, well knew of the illegality of said bonds, and with intent to carry out the fraudulent purposes and design which he and the other defendants who were stockholders had formed to defraud the creditors of said corporation entered into the possession of the property conveyed to him as such trustee, and within a few days thereafter filed the bill in this honorable court

which is herein referred to and prevented and hindered the
284 creditors of said corporation from asserting their just rights and claims to said property.

To the end, therefore, that the said defendants may, if they can, show cause why orators should not have the relief hereinafter prayed, and may, upon their respective knowledge, information, and belief, full, true, direct, and perfect answer make to the statements and averments of this bill of complaint, may it please your honors to grant unto orators writs of subpœna, to be directed to the Brierfield Coal & Iron Company, a corporation as aforesaid, whose principal place of business is at Brierfield, in the county of Bibb and State of Alabama; Thomas J. Peter, W. D. Carter, Kearsley Carter, Jr., Esther A. Peter, and John G. Murray, who reside in the county of Bibb, in the State of Alabama; Caswell C. Huckabee and J. T. Fitzgerald, who reside in Perry county, in said State; Robert L. McCally, who resides in the county of Calhoun, in said State; the City National Bank of Selma, a corporation as aforesaid, and the Commercial Bank of Selma, a corporation as aforesaid, both located in Selma, in the county of Dallas, in this district; the Alabama National Bank, a corporation as aforesaid, located at Birmingham, Ala-
285 bama, and that publication may be made as to Preston B. Plumb and Carrie S. Plumb, his wife, who reside at Emporia, in the State of Kansas; Justin S. Morrill, who resides at Strafford, in the State of Vermont; George I. Seney, Calvin S. Brice, and Samuel Thomas, each of whom resides in the city and State of New York; Laura E. Williams, who resides at Cincinnati, in the State of Ohio, and M. S. Pomeroy, who resides at Washington, in the District of Columbia, commanding and requiring the said defendants and each of them to answer, plead, or demur to this bill of complaint within the time and in the manner prescribed by the rules of this court.

Orators further pray that any of the creditors of the said Brierfield Coal & Iron Company who are willing to contribute to the costs and expenses of this suit may be allowed to come in and make themselves parties complainant in this cause on filing their petition herein, setting forth their said debts, demands, and claims, and that said matters shall be heard and determined in this cause.

Orators further pray that an account may be taken and stated between the said Brierfield Coal & Iron Company and each of
286 the creditors thereof to ascertain what sums, if any, are due and payable to each of them, and that an account may be stated between the said Brierfield Coal & Iron Company & subscribers and stockholders thereof to ascertain what amount, if any, is due and owing from each of said subscribers or stockholders, and that your honors will appoint a receiver of the property and effects of every description, with power and authority to collect, by suit or otherwise, the unpaid stock subscriptions to the defendant, The Brierfield Coal and Iron Company, to be distributed *pro rata* among the creditors thereof, and that your honors will by decree declare that the said mortgages or deeds of trust are fraudulent and void against the creditors of the said Brierfield Coal & Iron Company, or that your honors may declare that the said mortgages or deeds of trust

are void and create no lien or charge upon the property and effects of the said Brierfield Coal & Iron Company; and may it please your honors to grant unto your orators the writ of injunction issuing out of and under the seal of this honorable court or issued by one of your honors, according to the statute in such cases made and provided, directed to the said Preston B. Plumb and the said John G. Mur-
287 ray, his agent, also defendant, and the said Thomas J. Peter, commanding, enjoining, and restraining the said defendants and each of them, their servants, agents, and attorneys, from interfering with in any manner the property and effects of the defendant, *of* The Brierfield Coal & Iron Company, and that the said Preston B. Plumb, trustee, his agents and attorneys, be restrained from further prosecuting said suit in this honorable court by order of your honors, and that your orators may have such other or further relief in the premises as the nature *of* the circumstances of this case may require and to this honorable court shall seem meet; and as in duty bound orators will ever pray, &c.

TROY, TOMPKINS & LONDON,
Solicitors for Complainants.

Offered to be filed July 2, 1889. Filed by leave of court 5th day of July, 1889.

J. W. DIMMICK, *Clerk.*

Order Allowing Amended Bill to be Filed.

Circuit Court U. S., Middle District of Alabama. In Equity.

HOLLINS, SONS & Co.
vs. } 107.
BRIERFIELD COAL & IRON CO.

The above-entitled cause was set down to be called for hearing on Tuesday, the 2nd day of July, 1889, and complainants, as upon the hearing, offered for allowance an amended bill of complaint, and the same being considered by the court the complainants are allowed to file said amended bill as upon the hearing, and the defendants asking for time to examine and answer if necessary said amended — the cause is set down to be called for hearing on Monday, the 15th day of July, 1889.

This the 5th day of July, 1889.

JOHN BRUCE, *Judge.*

Filed the 5th day of July, 1889.

J. W. DIMMICK, *Clerk.*

288 *Answer of the Commercial Bank of Selma to Amended Bill.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS — CO. & OTHERS
vs.
BRIERFIELD COAL & IRON CO. & OTHERS. } 107. In Equity.

The separate answer of the Commercial Bank of Selma, one of the defendants in the above-stated case, to the amended bill of complaint filed in said case on the — day of July, 1889, by said Hollins, Sons & Co. & others as complainants against said Brierfield Coal and Iron Company, said Commercial Bank of Selma, and others as defendants.

SEC. 1. This defendant, for answer to said amended bill of complaint, refers to and restates all *all* the matters and things stated in the separate answer of this defendant to the original bill of the said complainants, which answer was filed in this cause by this defendant on the 29th of November, 1887.

SECTION 2. And this defendant, for further answer to said amended bill of complaint, says that an act of the General Assembly of the State of Alabama entitled "An act to amend and ratify the charter of the Brierfield Coal and Iron Company of Bibb County, Alabama," was duly enacted and approved on the 12th day of December,
289 1884, and this defendant hereby refers to said act and makes it a part of *his* said answer.

The seventh section of said act is in substance is follows:

"SECT. 7. Be it further enacted, That said company shall have the power from time to time to issue bonds for the payment of money borrowed or for its indebtedness secured by mortgage or mortgages on its property or any portion or portions thereof."

And defendant avers that said act of the General Assembly of the State of Alabama, ever since the 12th day of December, 1884, has been and still is in full force and effect.

SEC. 3. And said defendant, further answering, says that Preston B. Plumb, the trustee named in the deeds of trust, of which copies are attached to the complainants' said bill, as such trustee did, on, to wit, the 2ond day of August, 1887, file his bill of complaint in the circuit court of the United States for the middle district of Alabama against the said Brierfield Coal and Iron Company and this defendant and others as defendants, and the said Preston B. Plumb, as trustee as aforesaid, attached to his said bill, so filed, a copy of the said deeds of trust, of which a copy is attached to the com-
290 plainants' bill in this case; and the said Preston B. Plumb, as trustee in the said bill, stated the execution of said deeds of trust by said Brierfield Coal & Iron Company to himself as trustee, and that bonds were issued by said last-named company to the amount of four hundred and ninety-five thousand dollars under the

provisions of the said deed of trust; and that said last-named company had made default in the payment of interest past due on said bonds; and that after such default he, as such trustee, had taken possession of the property of the said Brierfield Coal & Iron Company covered by said deeds of trust, and praying for the direction of the honorable court in the execution of the trusts created by said deeds of trusts and for other relief; and this defendant avers that by the filing of the said bill of complainant by the said Preston B. Plumb as trustee as aforesaid this honorable court had and obtained jurisdiction of the trusts created in and by said deeds of trust and of said Preston B. Plumb as such trustee and of the defendants to the said bill of said Preston B. Plumb as trustee, who appeared and answered said bill; that such proceedings were had in said suit so com-

291 menced in this honorable court by said Preston B. Plumb as trustee that after the filing of said bill said Brierfield Coal & Iron Company, this defendant, and other defendants named therein appeared in said suit and answered said bill of said Preston B. Plumb as trustee; and afterwards, to wit, in November, 1887, the said Preston B. Plumb, the said trustee, filed in the said suit in this honorable court his resignation, in writing, of the trusts created by said deeds of trust; and thereupon this honorable court, by an order duly made in said suit on, to wit, the 21st day of November, 1887, accepted the resignation of said Preston B. Plumb as trustee; and this honorable court, by an order duly made in said suit, on, to wit, the 21st day of November, 1887, appointed W. L. Chambers (who was then and still is a citizen of the State of Alabama, residing in the said middle district) trustee under said deeds of trust in the place & stead of said Preston B. Plumb, trustee, resigned; and the said W. L. Chambers, as such trustee so appointed, was then and there, by the order of the honorable court, made the complainant in the said suit so commenced by the said Preston B. Plumb, as trustee as aforesaid, in the place and stead of said original complainant.

292 And this defendant avers that the said suit, so commenced by said Preston B. Plumb, as trustee as aforesaid, is still pending in this honorable court, and that said W. L. Chambers, as trustee aforesaid, so appointed as aforesaid, is the complainant in said suit, and as such trustee and under the orders and directions of this honorable court in said suit made said W. L. Chambers, as such trustee, took the possession, management, and control of all the property covered by said trust deeds; and this defendant further avers that when said amended bill of complaint was filed W. L. Chambers, as such trustee so appointed, still had the possession, management, and control of all the property covered by said trust deeds under the orders of this honorable court, and of all the matters stated in this section of this answer the complainants in this suit had notice before and at the time said bill was filed; and this defendant, on advice of counsel and on information and belief, states that said W. L. Chambers, as trustee as aforesaid, is necessary party defendant to the bill of complaint in this cause, yet said W. L. Chambers, trustee as aforesaid, is not a party defendant to this bill of complaint in this suit.

293 And this defendant objects to said bill because the said W. L. Chambers, as trustee as aforesaid, is not made a party defendant to said bill of complaint.

SECTION 4. And this defendant, further answering, says on information and belief that none of the bonds issued by said Brierfield Coal & Iron Company under the said deed of trust were issued without consideration; but, on the contrary, the said Brierfield Coal & Iron Company at the time said bonds were issued by said company received in cash for each one of said bonds ninety per cent. of the face value thereof; that the bonds so issued were each for one thousand dollars, and for each bond so issued the said Brierfield Coal & Iron Company at the time it was issued received nine hundred dollars in cash.

SECTION 5. That, as this defendant is informed and believes and states, the said bonds of the Brierfield Coal & Iron Company issued under said deed of trust were not issued illegally or contrary to the laws of the State of Alabama, but were issued for value and
294 lawfully and by the authority of all the stockholders of said company, duly expressed by resolution adopted by unanimous vote at a meeting of said stockholders, and also by authority of the board of directors of said company, expressed by resolution adopted by said board of directors.

SECTION 6. And this defendant states that this defendant purchased the said twenty-seven first-mortgage bonds described in the answer of this defendant to said original bill in good faith and for value, duly paid, and in the due and regular course of trade, and before the maturity of said bonds or either of them, and without notice or information, actual or constructive, that said bonds were issued illegally or without consideration paid therefor or without lawful authority or in excess of authority or for a larger sum than was authorized by law, and without any notice or information, actual or constructive, of any defect or irregularity or illegality or want of authority mentioned in said bill of the said complaint; and this defendant says that at the time the said second deed of trust was executed by said Brierfield Coal & Iron Company to said
295 Preston B. Plumb, as trustee as aforesaid, this defendant was the *bona fide* holder and owner of said bonds so described in the answer of the defendant to said original bill, for value, and as such this defendant was a creditor of said last-named company, and the said Brierfield Coal & Iron Company, acting by its board of directors, had full power and authority to cause said second deed of trust to be executed to secure the payment of the bonds of said company, mentioned in said deed of trust, under and by *writing* of the said section of the said act of the General Assembly of the State of Alabama, approved December 12th, 1884.

SECTION 7. And this defendant, further answering, says that this defendant had no connection with the beginning of the said suit, so commenced as aforesaid in this court by said Preston B. Plumb, as trustee, directly or indirectly.

And this defendant, on information and belief, denies that the said suit so commenced in this court by said Preston B. Plumb,

as trustee, was commenced or prosecuted for any fraudulent or improper purpose; and, having fully answered said amended
296 bill, this defendant prays to be hence discharged with its costs.

PETTUS & PETTUS &
T. B. ROY,
Counsel for Def't.

THE STATE OF ALABAMA, }
Dallas County. }

Before me, Geo. Wm. Lewis, a notary public in and for said county & State, personally comes R. M. Nelson, who, being duly sworn, deposes and says that he is the president of the said Commercial Bank of Selma and authorized to make this answer for said defendant, and that the matters & things stated in the foregoing answer of said defendant when stated as of the knowledge of said defendant are true, and when stated as on information and belief of defendant affiant believes the same to be true.

R. M. NELSON.

Sworn to and subscribed before me this 12th day of July, 1889, as witness my hand and official seal.

[SEAL.] GEORGE W. LEWIS,
Notary Public.

Filed July 13, 1889.

J. W. DIMMICK, *Clerk.*

297 *Answer of the City National Bank of Selma to Amended Bill.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. & Others }
vs. } 107. In Equity.
THE BRIERFIELD COAL & IRON CO. }

The separate answer of The City National Bank of Selma, one of the defendants in the above-stated case, to the amended bill of complaint filed in said case on the — day of July, 1889, by said Hollins, Sons & Co. & others, as complainants, against said Brierfield Coal and Iron Company, said City National Bank of Selma, as defendants.

SECTION 1. This defendant, for answer to said amended bill of complaint, refers to and restates all the matters and things stated in the separate answer of this defendant to the original bill of the said complainants; which answer was filed in this cause by this defendant on the 29th day of December, 1887.

SECTION 2. And this defendant, for further answer to said amended bill of complaint, says that an act of the General Assembly of the

State of Alabama entitled "An act to amend and ratify the
298 charter of the Brierfield Coal and Iron Company of Bibb county, Alabama," was duly enacted and approved on the 12th day of December, 1884, and this defendant hereby refers to said act and makes it a part of his answer. The seventh section of said act is in substance as follows:

"SECTION 7. Be it further enacted that said company shall have the power from time to time to issue bonds for the payment of money borrowed or for its indebtedness, secured by mortgages on its property or any portion or portions thereof;" and said defendant avers that said act of the General Assembly of the State of Alabama ever since the 12th day of December, 1884, has been and still is in full force and effect.

SEC. 3. And said defendant, further answering, says that said Preston B. Plumb, the trustee named in the deeds of trust (of which copies are attached to the complainant's said bill), as such trustee did, on, to wit, the 2d day of August, 1887, file his bill of complaint in the circuit court of the United States for the middle district of Alabama against the said Brierfield Coal & Iron Company and this defendant and others as defendants, and the said Preston B. Plumb, as trustee as aforesaid, attached to his said bill so filed
299 a copy of the said deeds of trust, of which a copy is attached to the complainants' bill in this case, and the said Preston B. Plumb, as trustee, in his said bill stated the execution of said deeds of trust by said Brierfield Coal & Iron Company to himself as trustee, and that bonds were issued by said last-named company to the amount of four hundred and ninety-five thousand dollars under the provisions of the said deed of trust, and that said last-named company had made default in the payment of interest past due on said bonds, and that after such default he, as such trustee, had taken possession of the property of the said Brierfield Coal & Iron Company covered by said deeds of trust, and praying for the aid and direction of this honorable court in the execution of the trusts created by said deeds of trust, and for other relief; and this defendant avers that by the filing of the said bill of complaint by the said Preston B. Plumb as trustee, as aforesaid, this honorable court had and obtained jurisdiction of the trust created in and by said deeds of trust and of said Preston B. Plumb as such
300 trustee and of the defendants to the said bill of said Preston B. Plumb as trustee, who appeared and answered said bill; that such proceedings were had in said suit so commenced in this honorable court by said Preston B. Plumb as trustee that after the filing of said bill said Brierfield Coal & Iron Company, this defendant, and other defendants named therein appeared in said suit and answered said bill of said Preston B. Plumb as trustee; and afterwards, to wit, in November, 1887, the said Preston B. Plumb, the said trustee, filed in the said suit in this honorable court his resignation in writing of the trusts created by said deeds of trusts; and thereupon this honorable court, by an order duly made in said suit, on, to wit, the 21st day of November, 1887, accepted the said resignation of said Preston B. Plumb as trustee; and this honorable

court, by an order duly made in said suit, on, to wit, the 21st day of November, 1887, appointed W. L. Chambers (who then was & still is a citizen of the State of Alabama, residing in the said middle district) trustee under said deeds of trust in the place and stead of Preston B. Plumb, trustee, resigned, and the said W. L. Chambers,
301 as such trustee so appointed, accepted said appointment — was then and there by the order of the honorable court made the complainant in the said suit so commenced by said Preston B. Plumb as trustee as aforesaid in the place and stead of said original complainant; and this defendant avers that the said suit so commenced by said Preston B. Plumb as trustee as aforesaid is still pending in this honorable court, and that said W. L. Chambers, as trustee as aforesaid, so appointed as aforesaid, is the complainant in said suit, and as such trustee and under the orders and directions of this honorable court in said suit made said W. L. Chambers, as such trustee, took the possession, management, and control of all the property covered by said trust deeds; and this defendant further avers that when said amended bill of complaint was filed said W. L. Chambers, as such trustee so appointed, still had the possession, management, and control of all the property covered by said trust deeds under the orders of this honorable court; and of all the matters stated
302 in this section of this answer the complainants in this suit had notice before and at the time said bill was filed.

And this defendant, on the advice of counsel and on information and belief, states that said W. L. Chambers, as trustee as aforesaid, is a necessary party defendant to the bill of complaint in this cause, and said W. L. Chambers, trustee as aforesaid, is not a party defendant to this bill of complaint in this suit; and this defendant objects to said bill because the said W. L. Chambers, as trustee as aforesaid, is not made a party defendant to said bill of complaint.

SEC. 4. And this defendant, further answering, says, on information and belief, that none of the bonds issued by said Brierfield Coal and Iron Company under the said deed of trust were issued without consideration; but, on the contrary, the said Brierfield Coal & Iron Company, at the time said bonds were issued by said company, received in cash for each of said bonds ninety per cent. of the face value thereof; that the bonds so issued were each for one thousand dollars, and for each bond so issued the said Brierfield Coal
303 and Iron Company at the time it was issued received nine hundred dollars in cash.

SECTION 5. That, as this defendant is informed and believes and states, the said bonds of the Brierfield Coal & Iron Company, issued under said deed of trust, were not issued illegally or contrary to the laws of the State of Alabama, but were issued for value and lawfully and by the authority of all the stockholders of said company, duly expressed by resolution adopted by unanimous vote at a meeting of said stockholders, and also by authority of the board of directors of said company, duly expressed by resolution adopted by said board of directors.

SECTION 6. And this defendant states that this defendant purchased the said t[illegible] first-mortgage bonds described in the

answer of this defendant to said original bill in good faith and for value, duly paid, and in the due and regular course of trade and before the maturity of said bonds or either of them and without any notice or information, actual or constructive, that said bonds were issued illegally or without consideration paid therefor or without lawful authority or in excess of authority or for a larger
304 sum than was authorized by law and without any notice or information, actual or constructive, of any defect or irregularity or illegality or want of authority mentioned in said amended bill of the complainants.

And this defendant says that at the time the said second deed of trust was executed by said Brierfield Coal & Iron Company on said Preston B. Plumb, as trustee as aforesaid, this defendant was the *bona fide* holder and owner of said twenty-eight bonds so described in the answer of this defendant to said original bill, for value, and as such this defendant was a creditor of said last-named company; and the said Brierfield Coal and Iron Company, acting by its board of directors, had full power and authority to cause said second deed of trust to be executed to secure the payment of the bonds of said company mentioned in said deed of trust under and by *writing* of the said seventh section of the said act of the General Assembly of the State of Alabama, approved December 12th, 1884.

SECTION 7. That this defendant had no connection, directly or indirectly, with the bringing of this suit, so commenced as
305 aforesaid by said Preston B. Plumb, as trustee as aforesaid, in this court; and this defendant, on information and belief, states that the said suit so commenced as aforesaid by said Preston B. Plumb, as trustee, in this court, was not commenced or prosecuted for any fraudulent or improper purpose.

And, having fully answered said amended bill of complaint, this defendant prays to be hence discharged with its reasonable costs.

PETTUS & PETTUS,
Counsel for said City National Bank of Selma.

THE STATE OF ALABAMA, }
Dallas County. }

Before me, Geo. W. Lewis, a notary public in and for said county and State, personally comes Albert G. Parrish, who, being sworn, deposes and says that he is the cashier of said City National Bank of Selma, of Selma, and is authorized to make this answer for said defendant, and that the matters & things stated in the foregoing answer of said defendant when stated as of the knowledge of said defendant are true, and when stated as on information & belief of the defendants affiant believes the same to be true.

ALBERT G. PARRISH.

Sworn & subscribed before me this the 12th day of July, 1889.
Witness my hand and official seal.

GEO. W. LEWIS,
Notary Public.

Filed July 13, 1889.

J. W. DIMMICK, *Clerk.*

306 *Answer of Jas. T. Fitzgerald to the Bill as Amended.*

In the Circuit Court of the United States for the Middle District of Alabama.

Hollins, Sons & Co. & Others
vs.
The Brierfield Coal & Iron Company & Others. } In Equity. 107.

The separate answer of James T. Fitzgerald, one of the defendants in the above-stated case, to the amended bill of complaint filed in said case on the — day of July, 1889, by said Hollins, Sons & Co. and others, as complainants, against said Brierfield Coal & Iron Company, said James T. Fitzgerald & others, as defendants.

Sec. 1. This defendant, for answer to said amended bill of complaint, refers to and restates all the matters and things stated in the separate answer of this defendant to the original bill of the said complainants, which answer was filed in this cause by this defendant on the 1st day of December, 1887.

Section 2. And this defendant, for further answer to said amended bill of complaint, says that an act of the General Assembly of the State of Alabama entitled "An act to amend and ratify the charter of the Brierfield Coal and Iron Company, of Bibb county,
307 Alabama," was duly enacted and approved on the 12th day of December, 1884; and this defendant hereby refers to said act and makes it a part of his answer; that the seventh section of said act is in substance as follows:

"Section 7. Be it further enacted that said company shall have the power from time to time to issue bonds for the payment of money boorrowed or for its indebtedness, secured by mortgage or mortgages on its property or any portion or portions thereof;" and said defendant avers that the said — General Assembly of the State of Alabama ever since the 12th day of December, 1884, has been & still is in full force and effect.

Section 3. And said defendant, further answering, says that said Preston B. Plumb, the trustee named in the deeds of trust, of which copies are attached to the complainants' said bill, as such trustee, did, on, to wit, the 2d day of August, 1887, file his bill of complaint in the circuit court of the United States for the middle district of Ala-
bama against the said Brierfield Coal & Iron Company and
308 this defendant and others as defendants, and the said Preston B. Plumb, as trustee as aforesaid, attached to his said bill so filed a copy of the said deeds of trust, of which a copy is attached to the complainants' bill in this case, and the said Preston B. Plumb, as trustee, in his said bill stated this execution of said deeds of trust by said Brierfield Coal and Iron Company to himself as trustee, and that bonds were issued by said last company named to the amount of four hundred and ninety-five thousand dollars under the provis-

ions of the said deed of trust, and that said last-named company had made default in the payment of interest past due on said bonds, and that after such default he, as said trustee, had taken possession of all the property of the said Brierfield Coal and Iron Company covered by said deeds of trust, and praying for the aid and direction of this honorable court in the execution of the trusts created by said deeds of trust, and for other relief; and this defendant avers that by the filing of the said bill of complaint by the said Preston B. Plumb as trustee as aforesaid,
309 this honorable court had and obtained jurisdiction of the trust created in and by said deeds of trust and of said Preston B. Plumb as such trustee and of the defendant to the said bill of said Preston B. Plumb as trustee, who appeared and answered said bill; that such proceedings were had in said suit so commenced in this honorable court by said Preston B. Plumb as trustee that after the filing of said bill said Brierfield Coal & Iron Company, this defendant, and other defendants named therein appeared in said suit and answered said bill of said Preston B. Plumb as trustee, and afterwards, to wit, in November, 1887, the said Preston B. Plumb, the said trustee, filed in this said suit, in this honorable court, his resignation in writing of the trusts, created by said deeds of trust; and thereupon this honorable court, by an order duly made in said suit, on, to wit, the 21st day of November, 1887, accepted the said resignation of said Preston B. Plumb as trustee, and this honorable court, by an order duly made in said suit, on, to wit, the 21st day of November, 1887, appointed W. L. Chamber (who then was and still is a citizen of the
310 State of Alabama, residing in said middle district) trustee under said deeds of trust in the place and stead of said Preston B. Plumb, as trustee, resigned; and the said W. L. Chambers, as such trustee so appointed, was th-n and there, by the order of this honorable court, made the complainant in the said suit, so commenced by said Preston B. Plumb as trustee as aforesaid, in the place and stead of said original complainant; and this defendant avers that the said suit so commenced by said Preston B. Plumb, as trustee as aforesaid, is still pending in this honorable court, and that said W. L. Chambers, as trustee as aforesaid, so appointed as aforesaid, is the complainant in said suit, and as such trustee and under the orders and direction of this honorable court in said suit made said W. L. Chambers, as such trustee, took possession, management, and control of all the property covered by said trust deeds; and this defendant further avers that when said amended bill of complaint was filed said W. L. Chambers, as such trustee so appointed, still had the possession, management, and control of all the prop-
311 erty covered by said trust deeds under the orders of this honorable court, and of all the matters stated in this section of this answer the complainants in this suit had notice before and at the time said amended bill was filed; and this defendant, on the advice of counsel and on information and belief, states that said W. L. Chambers, as trustee as aforesaid, is a necessary party defendant to the bill of complaint in this cause; that said W. L. Chambers,

trustee as aforesaid, is not a party defendant to the bill of complaint in this suit; and this defendant objects to said bill because the said W. L. Chambers, as trustee as aforesaid, is not made a party defendant to said bill of complaint.

SECTION 4. And this defendant, further answering, says, on information and belief, that none of the bonds issued by said Brierfield Coal and Iron Company under the said deed of trust were issued without consideration; but, on the contrary, the said Brierfield Coal & Iron Company at the time said bonds were issued by said company received in cash for each one of said bonds ninety per cent. of the face value thereof; that the bonds so issued were each for one thousand dollars, and for each bond so issued
312 the said Brierfield Coal and Iron Company, at the time it was issued, received nine hundred dollars in cash.

SECTION 5. That, as this defendant is informed and believes and states, the said bonds of the Brierfield Coal & Iron Company, issued under said deed of trust, were not issued illegally or contrary to the laws of the State of Alabama, but were issued for value and lawfully and by the authority of all the stockholders of said company, duly expressed by resolution adopted by unanimous vote at a meeting of said stockholders, and also by authority of the board of directors of said company, duly expressed by resolution adopted by said board of directors.

SECTION 6. And this defendant states that this defendant purchased the said twenty first-mortgage bonds described in the answer of this defendant to said original bill in good faith and for value, duly paid, and in the due and regular course of trade, and before the maturity of said bonds or either of them, and without any notice or information, actual or constructive, that said
313 bonds were issued illegally or without consideration paid therefor or without lawful authority or in excess of authority or for a larger sum than was authorized by law, and without any notice or information, actual or constructive, of any defect or irregularity or illegality or want of authority mentioned in said amended bill of the said complainants.

And this defendant says that at the time the said second deed of trust was executed by said Brierfield Coal and Iron Company — said Preston B. Plumb, as trustee as aforesaid, this defendant was the *bona fide* holder and owner of said bonds so *sub*scribed in the answer of this defendant to said original bill for value, and as such this defendant was a creditor of said last-named company; and the said Brierfield Coal & Iron Company, acting by its board of directors, had full power and authority to cause said second deed of trust to be executed to secure the payment of the bonds of said company mentioned in said deed of trust under and by virtue of the said seventh section of this said act of the General Assembly of the State of Alabama, approved December 12th, 1884.

314 And, having fully answered said amended bill of complaint, this defendant prays to be hence discharged with his costs in this behalf expended.

PETTUS & PETTUS,
Counsel for said James T. Fitzgerald, Defendant.

THE STATE OF ALABAMA, }
Dallas County. }

Before me, A. G. Parrish, a notary public in and for said county, personally comes the said James T. Fitzgerald, who, being duly sworn, deposes and says that the matters and things stated in the foregoing answer when stated as of his own knowledge are true and when stated as on information and belief he believes the same to be true.

J. T. FITZGERALD.

[SEAL.] Sworn to and subscribed before me this the 11th day of July, A. D. 1889, as witness my hand and official seal.

A. G. PARRISH,
Notary Public.

Filed July 13, 1889.

J. W. DIMMICK, *Clerk.*

315 *Answer & Plea of W. L. Chambers to Amended Bill.*

HOLLINS
vs. } 107.
BRIERFIELD *et al.*

The separate answer of W. L. Chambers, trustee, to the amended bill in this case.

Comes the respondent, W. L. Chambers, as trustee, and for answer to the bill of complaint as amended says that he adopts his answer to the original bill, and also further answering he denies each and every allegation of the amended bill not specifically admitted in his answer heretofore filed to the original bill, and for further answer to said bill as amended by way of pleas *puis durrene continuana* thereto saith:

That since his answer to the original bill and since the last continuance of this cause, viz., on the — day of July, 1889, a final decree was rendered by the circuit court of the United States for the middle district of Alabama in the cause mentioned in said original and amended bills as pending between Preston B. Plumb, as trustee, complainant, and The Brierfield Coal & Iron Company & others, defendants, and that said decree has been signed and enrolled.

Respondent further shows that said cause embraced the same subject-matter, the same questions of law and fact, and all the
316 parties to this suit, except complainants; that the evidence in that cause is substantially the same as that taken in the pending cause, and that the witnesses in the two cases are the same.

Respondent shows further that the complainants in this cause claimed by and through the said Brierfield Coal & Iron Company as creditors of said company, and this defendant prays the judgment of this court upon this his plea.

THORINGTON & SMITH,
Sol's for Chambers.

JOHN T. MORGAN, *Of Counsel.*

We certify that the foregoing plea of W. L. Chambers, trustee, to the bill of complaint of Hollins, Sons & Co. against the Brierfield Coal & Iron Co. is well founded in law and proper to be filed in this cause.

THORINGTON & SMITH,
Sol's for Chambers.

Personally appeared before me, J. W. Dimmick, clerk of the circuit c't of the United States for the middle district of Alabama, Thomas J. Peter, who, being duly sworn, deposes and says that the foregoing plea is not put in for delay; and, further, that the answer of said Chambers is true.

THOMAS J. PETER, *Agent.*

Sworn and subscribed before me this 15th day of July, 1889.
J. W. DIMMICK, *Clerk.*

Filed July 15, 1889.

J. W. DIMMICK, *Clerk.*

317 *Amendment to Answer of Brierfield Coal & Iron Co.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. *et al.*
vs.
BRIERFIELD COAL AND IRON CO. *et als.* } No. 107. In Equity.

The respondent, The Brierfield Coal and Iron Company, by leave of court first had and received, for answer to the amended bill filed in this case—

This respondent avers: 1st. That it is a corporation organized under the general incorporation laws of Alabama for the purpose of mining coal and iron ore and for manufacturing iron and nails and not for the purpose of buying goods, wares, and merchandise and selling the same to the public generally.

2. Being a corporation as aforesaid, it had no right to buy goods, wares, and merchandise or sell the same — such goods, wares, and merchandise as are usual and necessary to the proper conduct of its business of mining coal and iron ore and manufacturing iron and nails.

3. That the sums claimed by the plaintiffs to be due them by this respondent in the amounts and evidenced as *as* shown and stated in the bill in this cause were and are owing for goods, wares, and
318 merchandise purchased from said complainants by this respondent for the purpose of selling the same to the general public, and which were so sold, and that such goods, wares, & merchandise *and* not of the character used or necessary for the proper conduct of this respondent's business, as above indicated.

4th. This respondent avers further that at the time the debts

claimed by complainants to be due them from respondents were contracted this respondent was engaged in running a general store for the purpose of selling goods to the public generally, and that the goods, wares, and merchandise purchased from the complainants by this respondent, the payment for which is sought to be enforced by this suit, were placed in this respondent's general store and sold to the public generally and were in nowise necessary or incident to the prosecution of the business of mining or manufacturing, for which this respondent was incorporated under the general laws of the State of Alabama.

SECTION 5. This respondent, for further answer to the bill as amended in this cause, adopts its answer as heretofore filed and denies each and every allegation in the bill as amended which was not admitted in the respondent's original answer on file herein.

And now, having fully answered said bill, both original and as amended, this respondent pranys to be hence dismissed with its reasonable costs in this behalf expended; and it will ever pray, &c.

MARKS & MASSIE,
Sol's for Respondent, The Brierfield Coal & Iron Co.

Before me, J. W. Dimmick, clerk of the circuit court of the United States for the middle district of Alabama, personally appeared Thomas J. Peter, who, being first duly sworn, deposes and says that he is president of the Brierfield Coal and Iron Company, and that the facts set out in the foregoing answer are true, and that he is duly authorized by the said company, respondent herein, to make this answer.

BRIERFIELD COAL & IRON CO.,
By T. J. PETER, *President.*

Sworn to and subscribed this 15th day July, 1889.

J. W. DIMMICK, *Clerk.*

Filed July 15th, 1889.

J. W. DIMMICK, *Clerk.*

319 *Amendment to the Answer of T. J. Peter.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS *et al.*
vs.
BRIERFIELD COAL AND IRON CO. *et al.* } No. 107. In Equity.

The respondent, Thomas J. Peter, by leave of court first had and received, for answer to the amended bill filed in this cause—this respondent avers:

1. That he is the owner of a large amount of the stock and bonds of the respondent, The Brierfield Coal and Iron Company.

2. That said Brierfield Coal & Iron Company is a corporation organized under the usual laws of the State of Alabama for the pur-

pose of mining coal and iron ore, manufacturing iron and nails, and for like business, and being so organized it had no right to buy goods, wares, and merchandise and sell the same to the public.

3. That, being a corporation as aforesaid, the respondent, The Brierfield Coal & Iron Company, had no right to buy goods, wares, or merchandize and sell the same save such goods, wares, and merchandize as were usual and necessarily to the proper conduct of their business as miners of coal and iron and manufacturers of iron and nails.

4. That the sums claimed by the complainants, Hollins, Sons & Company and Fite, Porter, Lyles & Company, to be due them by the respondents, The Brierfield Coal and Iron Company, in the amounts and as shown and evidenced as stated in the bill in this cause were and are owing to said complainants, if at all, for goods, wares, and merchandise purchased from complainants by the Brierfield
320 Coal & Iron Company for the purpose of selling the same to the general public, and which were so sold, and that said goods, wares, and merchandize were not such as are usual and necessary for the proper conduct of the Brierfield Coal and Iron Company's business of mining coal and iron ore and manufacturing iron and nails.

5. This respondent avers further that at the time the debts claimed by complainants to be due them by the respondent, The Brierfield Coal and Iron Company, were contracted said Brierfield Coal and Iron Company were engaged in running a general store for the purpose of selling goods to the public generally, and that the goods, wares, and merchandize purchased from the complainants by the said company, the payment for which is sought to be enforced by this suit, were placed in said company's general store and sold to the public generally and were in nowise necessary or incident to the prosecution of the business of mining or manufacturing, for which the said Brierfield Coal & Iron Company was incorporated under the general laws of the State of Alabama.

6. This respondent, for further answer to the said bill in this cause as amended, adopts his answer heretofore filed and denies each and every allegation in the bill as amended which was not admitted in this respondent's answer heretofore filed herein; and now, having fully answered said bill, both original and as amended, this respondent pray- hence to be dismissed with his reasonable costs in this behalf expended, and will ever pray, &c.

THOMAS J. PETER.

MARKS & MASSIE,
Sol's for Resp't, Thomas J. Peter.

Before me, J. W. Dimmick, clerk of the circuit court of the United States for the middle district of Alabama, personally appeared Thomas J. Peter, who is known to me, who, being first duly sworn, deposes and says that he is one of the respondents in the above-entitled cause, and that the facts set out in the *following* answer are true.

July 15, '89. J. W. DIMMICK, *Clerk.*

Filed July 15, 1889.

18—1423 J. W. DIMMICK, *Clerk.*

321 *Answer of Seney, Thomas, & Brice.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. *et al.*, Complainants,
vs.
THE BRIERFIELD COAL & IRON COMPANY *et al.*, Defendant-. } In Equity. 107.

The defendants, Samuel Thomas, George I. Seney, and Calvin S. Brice, jointly and severally answering complainants' bill herein as amended, say: Defendants are not informed as to said alleged indebtedness of the Brierfield Coal and Iron Company to said complainants, and, so far as may be material, they require proof thereof. Defendants are informed and believe that the amount of the capital stock of said company subscribed for and the names of the persons making such subscriptions are correctly stated in said bill. Defendants deny the allegation of said bill that the amount due on said subscription of said stockholders was never paid. It is true that said T. J. Peter opened books of subscription, and that the same were subscribed as stated in said bill. Defendants wholly deny that said subscription contract was unauthorized, as
322 contrary to public policy, as in violation of the constitution and statutes of the State of Alabama. Defendants wholly deny that said corporation has received no value for said bonds, and aver *and aver*, upon information and belief, that said company *that said company* — for said bonds, and that the same were received by the holders thereof for value and in good faith. It is true that on July 29, 1887, said company executed and delivered said further assurance and mortgage or deed of trust, and thereafter, on the first day of August, 1887, the property of said company was turned over to said Preston B. Plumb, trustee. It is true that said Plumb, as such trustee, filed his bill of complaint in this court, as alleged in said bill. Defendants have no knowledge of said alleged indebtedness of said Brierfield Coal & Iron Company, as alleged in said bill *and* complainants and others, and so far as may be material require proof thereof. Defendants wholly deny that said bonds were issued without authority of law and in violation of the constitution and laws of the State of Alabama, and that they are fictitious and void under the said constitution and statute-.

323 And defendants wholly deny that said bonds and mortgage are fraudulent and void against complainants and the other creditors of said company; and defendants wholly deny that said Plumb, as such trustee, took possession of said property and filed said bill for the purpose of hindering, delaying, or defrauding said complainants or other creditors of said company. Said bill correctly states defendants' present holding of said bonds; defendants do not know who are the other holders of such bonds; defendants do not know the exact amount of money invested in said Brier-

field Coal & Iron Company; defendants paid the full amount of nine hundred dollars on each bond and one thousand dollars in stock originally issued to them, and in addition to such original payment have since that time paid into said company fifty-seven per cent. of the face of the stock issued to them respectively; and defendants wholly deny that said bonds were issued to or received by them without value, and aver that the same were fully paid for by them; defendants do not know the present value of the property of said company; defendants wholly deny the allegation that said Brierfield Coal and Iron Company never gave the notice
324 required by law in reference to the execution of said mortgage deed of trust, and that two-thirds of the stock in value of said corporation did not vote to authorize the issue thereof; defendants aver upon information and belief that said notice was duly given, and that the execution of said mortgage deed of trust *were* duly authorized by the stockholders of said corporation, and that the same are valid conveyances, as upon the face thereof they appear to be; defendants wholly deny that the issue of said five hundred thousand dollars of bonds was in violation of the statutes of Alabama, illegal, and unauthorized; defendants wholly deny that in year 1886, or at any other time, they were informed of the *illegal* invalidity of said contract of subscription, and they wholly deny that said instrument of further assurance was executed because of such alleged information or in fraud of the creditors of said corporation; and defendants wholly deny that there was any fraudulent purpose and design between the stockholders of said company to defraud the creditors thereof, or that said instrument *were* executed or said acts performed by said Plumb in pursuance of any
325 such purpose, or that the creditors were in fact defrauded by the execution of said instrument or by the acts of said trustees.

For further answer to said bill these defendants say that the said Preston B. Plumb, as trustee of said deeds of trust and in pursuance of the terms, conditions, and stipulations thereof, the said Brierfield Coal and Iron Company having made default in the payment of the interest coupons on the bonds secured thereby, took possession of all the property embraced in said deeds of trust on the — day of ——, 1887, and thereafter, on the — day of ——, 1887, filed his bill in this court against said company and these defendants and the other stockholders of said company and holders of bonds secured by said deed of trust; and thereafter and during the pending of said suit said Plumb resigned his said trusteeship and the same became vacant; whereupon, on the 21st day of November, 1887, one W. L. Chambers was by the order of this court duly appointed and qualified as successor of said Plumb as such trustee, and said Chambers thereupon became and was made by order of this court, as such
326 trustee, the complainant in said suit in the place and stead of said resigned trustee; and said Chambers, as such trustee, has been in the exclusive possession and control of all of said property since the date of his appointment up to the present time, managing and controlling it under the order and direction of this court,

and as such trustee said Chambers, under the orders and by the direction of this court, has borrowed large sums of money which have been used by him for the benefit of said property and which are a first charge and lien thereon, made such by the order of this court authorizing and approving the borrowing of said money and the use thereof for the benefit of and in the management and control of the business of said company; and defendants say that by virtue of the order of this court appointing said Chamber- the trustee of said deeds of trust and the subsequent proceedings of this court recognizing him as such trustee he became, was, and is the legal owner, custodian, and proprietor of all of said property; and these defendants object to said bill of complaint as being defective
327 because of its failure to make said Chambers, as such trustee, a party to the suit; and they further say that the original bill of complaint was defective at the time it was filed in this court, because it did not make said Plumb, who was then the legal owner of all of said property as the trustee under said deeds of trust, as such trustee, a party thereto, and because of these defects as to the trustee of said deeds of trust not being made a party to this suit these defendants say the bill of complaint herein is fatally defective and should be dismissed.

HUMES & WALKER,
Sol's for Defendants.

Oath to the foregoing answer is hereby waived.
Filed 15th day of July, 1889.

J. W. DIMMICK, *Clerk.*

328 *Answer of Esther A. Peter to the Amended Bill.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & Co. and Others
vs.
THE BRIERFIELD COAL & IRON Co. and Others. } In Equity. 107.

The separate answer of Esther A. Peter, one of the defendants in the above-stated case, to the amended bill of complainants, filed in said case on the — day of July, 1889, by said Hollins, Sons *Sons* & Co. & others, as complainants, against said Brierfield Coal & Iron Co. & said Esther A. Peter, as defendants.

SEC. 1. This defendant, for answer to said amended bill of complaint, refers to and restates all the matters and things stated in the separate answer of the defendant to the original bill of the said complainants, which answer was filed in this cause by this defendant on the 12th day of December, 1887.

SEC. 2. And this defendant, for further answer to said amended bill of complaint, says that an act of the General Assembly of the State of Alabama, entitled "An act to amend and ratify the charter

of the Brierfield Coal & Iron Company of Bibb county, Ala-
329 bama," was duly enacted and approved on the 12th day of December, 1884, and this defendant hereby refers to said act and makes it a part of her answer; that the seventh section of said act is in substance as follows:

SEC. 7. "Be it further enacted, That said company shall have the power from time to time to issue bonds for the payment of money borrowed or for its indebtedness, secured by mortgages on its property or any portion or portions thereof."

And said defendant avers that said act of the General Assembly of the State of Alabama, ever since the 12th day of December, 1884, has been and still is in full force and effect.

SEC. 3. And said defendant, further answering, says that said Preston B. Plumb, the trustee named in the deeds of trust, of which copies are attached to the complainants' said bill as such trustee, did, on, to wit, the 2d day of August, 1887, file his bill of complaint in the circuit court of the United States for the middle district of Alabama against the said Brierfield Coal and Iron Company, and this defendant and others as defendants, and the said Preston B. Plumb, as trustee as aforesaid, attached to his said bill so filed a copy of the said deeds of trust, of which a copy is attached to the complainants' bill in this case; and the said Preston B. Plumb,
330 as trustee in his said bill, stated the execution of said deeds of trust by said Brierfield Coal and Iron Co. to himself as trustee, and that bonds were issued by said last-named company to the amount of four hundred and ninety-five thousand dollars, under the provisions of the said deeds of trust, and that said last-named company had made default in the payment of interest past due on said bonds; and that after such default he, as such trustee, had taken possession of the property of the said Brierfield Coal & Iron Company covered by said deeds of trust, and praying for the aid and direction of this honorable court in the execution of the trusts created by said deeds of trust, and for other relief.

And this defendant avers that by the filing of the said bill of complaint by the said Preston B. Plumb, as trustee as aforesaid, this honorable court had and obtained jurisdiction of the trusts created in and by said deeds of trust and of said Preston B. Plumb, as such trustee, and of the defendants to the said bill of said Preston B. Plumb, as trustee, who appeared and answered said bill; that such proceedings were had in said suit so commenced in this honorable court by said Preston B. Plumb, as trustee,
331 that after the filing of said bill said Brierfield Coal and Iron Company, this defendant, and other defendants named therein appeared in said suit and answered said bill of said Preston B. Plumb, as trustee; and afterwards, to wit, in November, 1887, the said Preston B. Plumb, the said trustee, filed in the said suit in this honorable court his resignation, in writing, of the trusts created by said deeds of trust; and thereupon this honorable court, by an order duly made in said suit, on, to wit, the 21st day of November, 1887, accepted the resignation of said Preston B. Plumb, as trustee; and this honorable court, by an order duly made in said suit, on, to wit,

the 21st day of November, 1887, appointed W. L. Chambers (who then was and still is a citizen of the State of Alabama, residing in said middle district) trustee under said deeds of trust in the place and stead of said Preston B. Plumb, trustee, resigned; and the said W. L. Chamber, as such trustee so appointed, was then and there by the order of the honorable court made the complainant in the said suit so commenced by said Preston B. Plumb, as trustee as aforesaid, in the place and stead of said original complainant; and this defendant avers that the said suit so commenced by said
332 Preston B. Plumb, as trustee as aforesaid, is still pending in this honorable court, and that said W. L. Chambers, as trustee as aforesaid, so appointed as aforesaid, is the complainant in said suit, and as such trustee and under the orders and directions of this honorable court in said suit made said W. L. Chambers, as such trustee, took the possession, management, and control of all the property covered by said trust deeds; and this defendant further avers that when said amended bill of complaint was filed said W. L. Chambers, as such trustee so appointed, still had the possession, management, and control of all the property covered by said trust deeds under the order of this honorable court; and of all the matters stated in this section of this answer the complainant in this suit had notice before and at the time said amended bill was filed.

And this defendant, on advice of counsel and on information and belief, states that said W. L. Chambers, as trustee as aforesaid, is a necessary party defendant to the bill of complaint in this cause; yet said W. L. Chambers, trustee as aforesaid, is not a party defendant to this bill of complaint in this suit, and this defendant
333 objects to said bill because the said W. L. Chambers, as trustee as aforesaid, is not made a party defendant to said bill of complaint.

SEC. 4. And this defendant, further answering, says, on information and belief, that none of the bonds issued by said Brierfield Coal and Iron Company under the said deed of trust were issued without consideration, but, on the contrary, the said Brierfield Coal & Iron Company, at the time said bonds were issued by said company, received in cash for each of said bonds ninety per cent. of the face value thereof; that the bonds so issued were each for one thousand dollars, and for each bond so issued the said Brierfield Coal & Iron Company, at the time it was issued, received nine hundred dollars in cash.

SEC. 5. That, as this defendant is informed and believes and states, the said bonds of the Brierfield Coal and Iron Company issued under said deed of trust were not issued illegally or contrary to the laws of the State of Alabama, but were issued for value and lawfully and by the authority of all the stockholders of said company, duly expressed by resolution adopted by unanimous vote at a meeting of said stockholders, and also by authority of the
334 board of directors of said company, duly expressed by resolution adopted by said board of directors.

SEC. 6. And this defendant states that this defendant purchased the said 198 first-mortgage bonds described in the answer of this

defendant to said original bill as the bonds of this defendant as holders thereof and the other 20 for her children in good faith and for value, duly paid, and in the due and regular course of trade, and before the maturity of said bonds or either of them, and without any notice or information, actual or constructive, that said bonds were issued illegally, or without consideration paid therefor, or without lawful authority, or in excess of authority, or for a larger sum than was authorized by law, and without any notice or information, actual or constructive, of any defect or irregularity or illegality or want of authority mentioned in said amended bill of the said complainants; and this defendant says that at the time the said second deed of trust was executed by said Brierfield Coal & Iron Company to said Preston B. Plumb, as trustee as aforesaid, this defendant was the *bona fide* holder and owner of said 198 bonds so described in the answer of this defendant to said original
335 bill, for value, and as such this defendant was a creditor of said last-named company, and the said Brierfield Coal & Iron Company, acting by its board of directors, had full power and authority to cause said second deed of trust to be executed to secure the payment of the bonds of said company mentioned in said deed of trust under and by virtue of the said seventh section of the said act of the General Assembly of the State of Alabama approved December 12th, 1884.

SEC. 7. And this defendant says that she became a subscriber to the capital stock of the Brierfield Coal and Iron Company to the amount of fifty thousand dollars, and that she paid to said company for said stock so subscribed fifty thousand dollars in money in full payment and discharge of liability to said company on account of her said stock subscription; that the said payment of fifty thousand dollars so made by this defendant to said company was made in the summer — 1884; that this defendant also paid to said company nine hundred dollars in cash for *such* one of the said one hundred and ninety-eight bonds purchased in her own name as aforesaid
336 at the time the same were issued, and she also paid in cash to said company nine hundred dollars for each one of the twenty bonds mentioned in her answer to the original bill as purchased by this defendant for her four children respectively.

This defendant was not indebted to said Brierfield Coal and Iron Company, when the original bill was filed in this case, as stockholder or in any other way, to any amount whatsoever; nor is this defendant now indebted to said Brierfield Coal and Iron Company for stock or for any other thing or in any way to any amount whatsoever.

SEC. 8. And, further answering, this defendant says that she is not and never was a citizen of the State of Alabama; that this defendant, prior to 1880, became and ever since has been and now is a citizen of the State of Missouri; that this defendant, prior to 1883 and ever since, has been and now is the owner of a separate estate in her own right under the statutes of the State of Wisconsin, and the money paid by this defendant to the said Brierfield Coal and Iron Company, as hereinbefore mentioned, was the money of this defendant and a part of her said estate.

337 SECTION 9. This defendant took no part in the management of said Brierfield Coal & Iron Company or its business, except as herein stated; that this defendant had no connection of any kind with the filing of the bill of said Preston B. Plumb, as trustee, in this court, and she says that she did not do any act in any of the matters mentioned in the said amended bill of complaint with intent either to hinder, delay, or defraud any of the complainants or any creditor of the Brierfield Coal and Iron Company or any other person; and on information and belief this defendant says that the said bill of complainant filed by said Preston B. Plumb, as trustee, in this court was not filed with the intent to hinder, delay, or defraud any of the creditors of said Brierfield Coal & Iron Company, but was filed fairly and in good faith and for honest and legal purposes.

And, having fully answered, this defendant prays to be hence discharged with her reasonable costs in this behalf expended.

PETTUS & PETTUS,
Counsel for said Esther A. Peter.

Personally comes before me, J. W. Dimmick, clerk of the circuit court of the United States for the middle district of Alabama, Thomas J. Peter, who, being duly sworn, deposes and says that he is agent for the defendant, Esther A. Peter, and that the matters and things stated in the foregoing answer of defendant as of her own knowledge are true, and that the matter- and things stated in said answer as on information and belief affiant believes to be true.

THOMAS J. PETER.

Sworn to and subscribed before me this 15th day of July, 1889.
J. W. DIMMICK, *Clerk.*

Filed the 15th day of July, 1889.
J. W. DIMMICK, *Clerk.*

338 *Exceptions to Answer of Calvin S. Brice, Geo. I. Seney, Samuel Thomas.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. *et al.*
vs.
BRIERFIELD COAL & IRON COMPANY *et als.* } In Equity. # 107.

Now come the complainants in the above-entitled cause and except to so much of the answers of the defendants, Calvin S. Brice, George I. Seney, and Samuel Thomas, as sets up the institution of the suit in this court by Preston B. Plumb as trustee, his resignation and the appointment of W. L. Chambers as trustee as his successor, and to each and every part of said answer referring to said matters, for the same is irrelevant and impertinent and form no sufficient

ground of defence in bar or abatement of the bill of complaint filed by these complainants in this cause, and for the further reason that said matters set up in said part of said answer or plea *is* no sufficient answer or plea in law to complainants' amended bill of complaint.

TROY, TOMPKINS & LONDON,
Sol's for Compl'ts.

Filed the 16th day of July, 1889.

J. W. DIMMICK, *Clerk.*

339 *Exception to Amended Answer of Brierfield Coal & Iron Co.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. *et al.*
vs.
BRIERFIELD COAL & IRON CO. *et al.* } # 107.

And complainants except to the amended answer of the Brierfield Coal & Iron Company to the amended bill of complaint, for the same is irrelevant and impertinent and form- no sufficient ground of defence to this bill of complaint. Complainants except separately to paragraphs one, two, three, and four of said amended answer, for the same is irrelevant and impertinent and forms no sufficient ground of defence to this bill of complaint; and, further, for that it is alleged in said bill and not denied in said answer that the goods, wares, and merchandise, in the purchase of which the debts to complainants were created, have been delivered to and accepted by said defendant, and the said complainants have in all things fully executed said contract on their part.

TROY, TOMPKINS & LONDON,
Solicitors for Complainant-.

Filed the 16th day of July, 1889.

J. W. DIMMICK, *Clerk.*

340 *Exceptions to Amended Answer of T. J. Peter.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. *et al.*
vs.
BRIERFIELD COAL & IRON COMPANY *et al.* } 107.

And complainants except to the amended answer of T. J. Peter to the bill of complaint, for the same is irrelevant and impertinent and forms no sufficient ground of defence to this bill of complaint. Complainants except separately to paragraphs two, three, four, and five of said amended answer, for the same is irrelevant and impertinent

and forms no sufficient ground of defence to this bill of complaint; and, further, for that it is alleged in said bill and not denied in said answer that the goods, wares, and merchandise, in the purchase of which the debts to complainants were created, have been delivered to and accepted by said defendant, and the said complainants have in all things fully executed said contract on their part.

TROY, TOMPKINS & LONDON,
Solicitors for Complainants.

Filed the 16th day of July, 1889.

J. W. DIMMICK, *Clerk.*

341 *Exception to Amended Answer of W. L. Chambers, Trustee, to Amended Bill — Compl't.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. *et al.*
vs.
BRIERFIELD COAL & IRON CO. *et al.* } # 107.

The complainants except to the separate answer of W. L. Chambers, trustee, to the amended bill for insufficiency, in this: That the said answer does not purport to be a full answer, to the best of his knowledge and belief, as to the matters alleged in the amended bill of complaint; second, for that said defendant has not undertaken to answer the matters alleged in said amended bill of complaint; third, for that the said alleged answer is simply a denial on the part of said defendant in general terms of the matters in said amended bill of complaint alleged. The complainant- except to the plea of the said W. L. Chambers, trustee, first, for that said plea is no sufficient answer in law to complainants' amended bill of complaint; second, that complainants were not parties to nor bound by the said alleged decree.

TROY, TOMPKINS & LONDON,
Comp'ts' Sol.

Filed the 16th day of July, 1889.

J. W. DIMMICK, *Clerk.*

342 *Exceptions to Original Answer of W. L. Chambers, Trustee.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. *et al.*
vs.
BRIERFIELD COAL & IRON COMPANY *et al.* } # 107.

And said complainants except to so much of the original answer filed by W. L. Chambers, trustee, in the above-stated case as sets up

by way of plea the suit instituted in this court by Preston B. Plumb, as trustee, against the defendant-, The Brierfield Coal and Iron Company and others, for the said matters alleged in the said plea are sufficient in law as a bar to the recovery of complainants herein, and for the further reason that said matters alleged therein are insufficient in law to abate this suit; and, as further ground of exception to the said plea, complainants say that said matter set up therein is irrelevant and impertinent and constitutes no defense in bar or in abatement of this suit.

TROY, TOMPKINS & LONDON,
Sol's for Comp'ts.

Filed the 16th day of July, 1887.

J. W. DIMMICK, *Clerk.*

343 *Exceptions to Amended Answer of City Nat'l Bank of Selma, Jas. T. Fitzgerald, Commercial B'k of Selma, Esther A. Peter to Amended Bill of Compl't.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. *et als.*
vs.
BRIERFIELD COAL & IRON CO. *et als.* } # 107.

The complainants except separately to so much of the separate answers of the City National Bank of Selma, James T. Fitzgerald, Commercial Bank of Selma, and Esther A. Peter to the amended bill of complaint as follows: To section two of each of said answers separately for that said matters in said section alleged is irrelevant and impertinent and form- no sufficient ground of defence to said amended bill; to section three of each of said answers separately for that said matter in said section alleged is irrelevant and impertinent and forms no sufficient ground of defence to said amended bill, and for further ground that it appears by the record in this cause that said Chambers, trustee, on his own motion was made a party herein and has appeared and filed a plea and answer to the original and to said amended bill of complaint; to section (6) six of each of said answers separately for that said matter in iaid section alleged is irrelevant and impertinent and forms no suf-
344 ficient ground of defence to said amended bill.

And for further grounds of exception complainants say that it appears from Exhibit A attached to the original bill of complainant in this cause that the said bonds by the laws of the State of Alabama were not negotiable instruments, and — is not by the said answer averred that the same or any part of them were ever endorsed to the defendants or either of them.

And complainants except separately to the eighth section of the

answer of the defendant, Esther A. Peter, for the same is irrelevant and impertinent and forms no defence to said bill of complaint.

TROY, TOMPKINS & LONDON,
Solicitors for Complainant-.

Filed the 16th day of July 1889.

J. W. DIMMICK, *Clerk.*

345 *Decree Overruling Exceptions to Pleas & Answers of Def'ts to Amended Bill, &c.*

HOLLINS, SONS & Co. and Others
vs.
THE BRIERFIELD COAL & IRON COMPANY & Others. } # 107.

This cause came on again to be heard on the exceptions of the complainants to the pleas and answers of the defendants to the amended bill of complaint, which was filed by leave of the court on the 5th day of July, 1889; and said exceptions having been fully argued by the counsel of the respective parties and duly considered by the court, it seems to the court that the objections of the defendants to the filing of said amended bill of complaint were well taken, and that the order allowing said amended bill to be filed was improvidently made and ought to be set aside. It is therefore considered and ordered that the said order allowing said amended bill of complaint to be filed is hereby vacated and set aside, and the said amended bill of complaint is disallowed.

And thereupon the cause was submitted on pleadings and proofs as noted by the clerk of this court, and also on the motion of the defendants (who have answered in this cause) to dismiss the complainants' bill of complaint for want of equity for final decree.

July, 18, '89.

JOHN BRUCE, *Judge.*

Filed the 18th day of July, 1889.

J. W. DIMMICK, *Clerk.*

346 *Testimony Taken Before the Special Examiners.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS AND Co. and Others
vs.
THE BRIERFIELD COAL AND IRON Co. & Others. } No. 107. In Equity.

Testimony taken before Benj. P. Seals, special examiner, pursuant to an order of said court entered on the 19th day of January, 1889.

MONDAY, *March* 11, 1889.

Present: Alex. T. London and Samuel F. Rice, Esquires, repre-

senting the complainants; Thorington and Smith, Esqrs., representing W. L. Chambers, trustee; Marks & Massie, Esquires, representing The Brierfield Coal & Iron Co., Thos. J. Peter, John G. Murray.

347 W. L. Chambers, as trustee, objects to each of the orders for the examination of witnesses dated and filed on the 19th day of January, 1889—

First. Because there is no law or rule of court authorizing the examination of witnesses in the manner directed by said orders.

Second. There is no jurisdiction in the court to make said order or either of them.

The complainants, in answer to these objections, state that the trustee, W. L. Chambers, is a party to this proceeding without their consent, and was made on motion without any notice to complainants.

JOHN G. MURRAY, a witness for and on behalf of the complainants, being duly sworn, testifies as follows:

Examination by Mr. LONDON:

Q. What is your name and where do you reside?

A. John G. Murray, and reside at Randolph, in Bibb county, Alabama.

Q. Were you ever connected with the Brierfield Coal and Iron Company?

A. Yes, sir.

Q. What position did you occupy?

A. I occupied first the position of secretary and afterwards the position of secretary and treasurer.

348 Q. When did your connection with the company begin?

A. (Witness desires to examine his deposition in the case of Chambers, trustee, *vs.* The Brierfield Coal and Iron Company *et als.*, which he does.) In May, 1882.

Q. Was that at the organization of the company?

A. Yes, sir.

Q. You are the same John G. Murray who was examined in the case of W. L. Chambers, trustee, against The Brierfield Coal and Iron Co. *et als.?*

A. Yes, sir.

Q. In this court?

A. Yes, sir.

Q. The paper you have before you is your deposition taken on the reference in that cause, isn't it?

A. Yes, sir.

Q. Mr. Murray, the statements made by you in this deposition, which you have been shown, set out the facts?

A. Yes, sir.

Q. As far as they appear in that deposition?

A. Yes. Set out the facts as nearly as I could ascertain them from the books of the company.

Q. In this deposition of yours do you state what proportion of

the subscription made by each of the stockholders was paid or discharged by crediting the coupons on the bonds that were issued to the said stockholders?

A. No, sir; not directly.

Q. Were the subscriptions made by any of the stockholders
349 to the Brierfield Coal and Iron Company paid or discharged in any part by crediting their stock subscriptions with coupons on the first-mortgage bonds that were issued?

W. L. Chambers, trustee, and the Brierfield Coal & Iron Co. & Thos. J. Peter jointly object to the question on the ground that it calls for illegal and irrelevant testimony.

A. Yes, sir. Some of the stockholders did pay part of their subscriptions by crediting past-due interest coupons on their stock subscriptions. One of the stockholders, Mrs. E. A. Peter, did not receive any credit of this kind, but paid her stock subscriptions in full in cash.

Q. Did the Brierfield Coal and Iron Co. pay in cash any of the coupons on the first-mortgage bonds to any of the stockholders?

A. Yes, sir.

Q. Do the books of the Brierfield Coal & Iron Co. show the amounts of interest coupons that were credited to each stockholder on his stock subscription?

A. Yes, sir.

Q. Do the books of the Brierfield Coal and Iron Company show how much was paid on account of interest coupons, in cash, to each of the stockholders who held any?

A. Yes, sir.

Q. Can you, from the books of the Brierfield Coal and Iron Company, furnish a statement showing the amount credited to
350 each stockholder on account of the stock subscription of interest coupons, and the amount paid in cash to each holder of first-mortgage bonds who was a subscriber to stock in the Brierfield Coal and Iron Company?

Objected to by Chambers, trustee, and Brierfield Coal & Iron Co. *et als.*, jointly, upon the ground that it calls for illegal and irrelevant testimony.

A. Yes, sir.

Q. Will you furnish the statement desired?

A. Yes, sir; I can furnish it now.

Chambers, trustee, & Brierfield Coal and Iron Co., T. J. Peter *et als.*, objects jointly to the statement called for on the ground that it is illegal and irrelevant testimony.

Q. Will you please furnish the statement asked for?

THORINGTON: An additional ground of our objection is that the books themselves are the best evidence of the facts set forth in said statement.

By Mr. LONDON:

Q. Mr. Murray, is the statement that you propose to offer one taken by you from the books of the company, and have you knowledge of its correctness independently of the books of the company?

A. I know that this is a copy, but independently of the books I can't state that those facts are correct.

Q. Where are the books from which this account was taken?

A. At Brierfield; in the office of the Brierfield Coal and Iron Company.

351 Q. Who has control of the books?

A. I don't know who has control of them.

Q. Don't you know they are in the custody or control of W. L. Chambers, trustee?

A. I know that they were there when I left there, but I am not connected with the business now.

Q. You kept the books referred to?

A. Yes, sir; they were kept under my supervision.

Q. You know the entries made in the books were correct at the time they were made?

A. Yes, sir; to the best of my knowledge.

Q. This statement which you have in your hand was taken from the books?

A. It was taken by my instructions from the books of the company by a clerk in the office.

Q. Have you any knowledge as to the correctness of the statement of your own?

A. Yes; I verified the total with the account of interest on first-mortgage bonds in the books.

Q. After the verification referred to, and from your knowledge of the account, with the use of the statement which you have before you, can you state now what amount was paid to each stockholder in cash or credited to his account of interest coupons?

Objected to by Chambers, trustee, on the ground that it calls for illegal and irrelevant testimony, and also because the books themselves are the highest and best evidence of the facts sought to be elicited. Same objection by Marks & Massie for the parties they represent.

352 A. I think I can.

Q. Please give the names of the persons and the amounts paid or credited on subscription account of interest coupons, and also name and amount each stockholder to whom interest coupons were paid in cash.

Same objections as noted above.

A. I will first state the amount of interest coupons credited to stock subscriptions on account of interest on first-mortgage bonds:

Justin S. Morrill	$990 00
C. C. Huckabee	2,166 00
Geo. I. Seney	7,200 00

T. J. Peter	35,880 00
Mrs. C. S. Plumb	7,260 00
John G. Murray	240 00
Samuel Thomas	9,600 00
C. S. Brice	540 00
	63,876 00

The only interest coupons of first-mortgage bonds paid in cash were to the amount of $60, paid to John G. Murray.

By Mr. THORINGTON:

Q. Mr. Murray, is the answer you have just given on oath taken from the statements hereinbefore referred to by you or from your own knowledge?

A. Taken from the statement.

The trustee, W. L. Chambers, objects to the answer given by the witness to complainant's last interrogatory on the ground
353 that it is illegal and irrelevant testimony, and also because the books of the company furnish the highest and best evidence of the facts stated by the witness.

Marks & Massie join in the same objection for those they represent.

By Mr. LONDON:

Q. After having looked at the paper are you able to say whether the statement made by you in reference to the amount paid or credited is correct?

A. Yes, sir; I could not have made the statement without referring to this copy.

Q. After looking at the statement which you used was your recollection refreshed as to the amounts?

A. To the best of my knowledge the amounts are correct.

Answer objected to on the ground that it is not called for by the interrogatory.

Q. Do you know that the accounts of the Brierfield Coal and Iron Company from which you say this statement was taken were correctly kept?

A. They were, to the best of my ability, sir.

Q. They were under your charge during the time these entries were made?

A. Yes, sir.

Q. Were they verified from time to time in the manner of accountants to test their accuracy by taking trial balances?

A. Yes, sir.

Objected to on the ground that it calls for conclusions of the witness, and further because it is illegal.

Q. Are you an accountant?

A. Yes, sir.

354 Q. How long have you been engaged in keeping accounts?
A. About 12 years.

Q. From your knowledge of accounts, can you say whether the accounts of a corporation are correctly kept or not?

Objected to on the ground that it is irrelevant.

A. Yes, sir; I think I can.

Q. You are an expert accountant, are you not?

A. Yes, sir; I am a good accountant.

Q. You had personal charge of the accounts of this company at the time that these entries were made, but you say you had assistance in making the entries in the books?

A. Some of them; yes, sir.

Q. Do you know whether the entries on the books of the Briarfield Coal & Iron Co. were correct at the time they were made?

A. Yes, sir.

Q. Please look at your depositions on the reference in the case of W. L. Chambers, trustee, against The Briarfield Coal & Iron Co. and others and state how much was paid in money to the company on account of subscriptions to stock by the several stockholders.

A. The amount paid by Geo. I. Seney was $22,800.00, and of that amount $7,200 was coupons; Mrs. E. A. Peter, $50,000, paid in cash; Justine S. Morrill, $6,270.00, $990 of which was paid in coupons; R. L. McCalley, $5,000, which was paid in cash. It was credited to
355 him as a cash payment. It is explained in this testimony here (referring to his depositions in the case of W. L. Chambers, trustee, against The Briarfield Coal & Iron Co.). C. C. Huckabee, $2,166.00, all of which was paid in coupons. John G. Murrey paid for stock $600, $240 of which was paid in coupons; T. J. Peter, $83,640.85, $35,880.00 of which was paid in coupons. Mrs. C. S. Plumb paid $43,089.78, $7,260.00 of which was paid in coupons. Sam'l Thomas paid $23,745.00, $9,600.00 of which was paid in coupons. C. S. Brice paid $810, $540 of which was paid in coupons.

Q. Were certificates of stock issued by the company to the several stockholders who originally subscribed?

Objected to by W. L. Chambers, trustee, on the ground that it was illegal and irrelevant.

A. Yes, sir.

Q. At the meeting at which it was voted that a mortgage on the property of the company be made and bonds issued, can you state who the stockholders were that were present in person or by proxey?

A. Yes, sir; I can. All the stockholders were present in person or by proxey. There were T. J. Peter, C. C. Huckabee, B. L. McCalley, C. S. Plumb, Geo. I. Seney and associates (Calvin S. Brice, Sam'l Thomas, and Geo. I. Seney composed Geo. I. Seney and associates), Justine S. Morrill, Mrs. E. A. Peter, and Plumb and Hood.

Q. Will you please state who Plumb and Hood was composed of?

A. Preston B. Plumb and Calvin Hood.

Q. The persons named constituted all of the stockholders?

356 A. Yes, sir.

Q. How much did the Briarfield Coal & Iron Co. pay for the lands and plant originally purchased upon the organization of the company?

Objected to on the grounds that it was illegal and irrelevant.

A. There were several purchases made at the time. The only one I remember exactly about was the Huckabee purchase.

Q. What was the consideration for that purchase?

A. To the best of my remembrance, it was $45,000.

Q. What other purchases were made about that time by the company, if any?

Objected to as illegal and irrelevant.

A. There were numerous other purchases made. I cannot state them without reference to the vouchers and deeds.

Q. What other property did the Briarfield Coal & Iron Co. have besides the Huckabee property upon its organization?

Objected to as illegal and irrelevant.

A. They had various other coal, iron ore, and timber lands, which were all purchased about that time.

Q. Do the books of the company show the amount that was paid for these various tracts of land?

A. Yes, sir.

Q. Before the bonds were issued and the mortgage executed to secure the same had the company made any extensive outlay of money for lands or improvements?

357 A. Yes, sir; it had.

Q. Can you say how much?

A. No, sir; I cannot say how much. I can state the nature of the improvements.

Q. Well, do that.

A. They had begun and probably completed or almost completed a very extensive nail factory; repairing rolling mills, building railroad, opening mines, building tenement-houses and stores, and making all the necessary preparations to operate all of these enterprises.

Q. Was any part of the proceeds of the sale of the bonds used to pay for these improvements or erections spoken of?

A. Yes, sir.

Q. Will the books show how much?

A. Yes, sir; the books will show — much was received and how it was expended.

Q. The original purchasers and present holders of the bonds of the Briarfield Coal & Iron Co. were correctly stated on the other reference?

A. Yes, sir.

Q. Here is a statement. Who was it prepared by (hands witness a paper)?

A. It was made by me. Part of it is not in the same handwriting, but it was made at my instance.

Q. Is that paper a correct statement of the indebtedness of the Briarfield Coal & Iron Co. other than its bonded indebtedness?

W. L. Chambers objects to this statement as evidence of the
358 debts of the complainants in this suit on the ground that it is illegal and irrelevant.

A. I think it is.

Q. Please look on the statement and see what amount there appears to be due Hollins, Sons & Co.

Objected to on the ground that it is illegal and *and* that there is higher and better evidence of Hollins, Sons & Co.'s debts.

Marks & Massie, attorneys for the Briarfield Coal & Iron Co., T. J. Peter, and John G. Murry further objected, on the ground that the statement nor the books from which it was taken are relevant evidence against these defendants, Peter and Murrey.

A. There is owing Hollins, Sons & Co. $5,351.25, which amount is covered by the notes of the Briarfield Coal & Iron Co. held by them. There is owing them, on open account, on the books of the company $671.90.

W. S. Thorington, solicitor for Chambers, trustee, objects to any of the testimony as to the amount claimed to be due on any of the notes due Hollins, Sons & Co., which were not due at the time the bill in this case was filed, on the ground that such testimony is illegal and irrelevant.

Marks & Massey, attorneys for parties they represent, join in this same objection.

Q. Please look at the statement and state how much is due Fite, Porter, Lyles & Co.

359 Objected to, separately, that any testimony as to the amount claimed to be due on any of the notes due Fite, Porter, Lyles & Co., which were not due at the time the bill in this case was filed, is illegal and irrelevant.

A. There is due Fite, Porter, Lyles & Co. $6,098.39, which is covered by the notes of the Briarfield Coal & Iron Co. held by them, and there is also due said Fite, Porter, Lyles & Co., on open account, $3,612.15.

W. L. Chambers, as trustee, and Marks & Massey, for the parties they represent, objected to any testimony as to so much of said indebtedness which is evidenced by the notes that were not due at the time the bill in this case was filed.

Q. From your connection with the Briarfield Coal & Iron Co. and the management of its accounts can you state, of your own knowledge, as to the substantial correctness of the accounts set out in that statement and to the several amounts due to the several persons named therein?

Objected to on the ground that the books and accounts are not evidence against these defendants, and any testimony as to the amount claimed to be due on any of the notes which were not due at the time the bill in this case was filed is illegal and irrelevant.

A. Yes, sir; my belief is that these amounts are correct.

Q. Do you think, from your knowledge of the affairs of the
360 Briarfield Coal & Iron Co., that you can state from your own knowledge that the accounts handed you are correct?

Objected to on the ground that the books and accounts are not evidence against these defendants, and any testimony as to the amount claimed to be due on any of the notes which were not due at the time the bill in this case was filed is illegal and irrelevant.

A. Yes, sir; I think I can.

Q. What amount was due Dismukes & Co.?

Objected to on the ground that the books and accounts are not evidence against the defendants, and any testimony as to the amount claimed to be due on any of the notes which were not due at the time the bill in this case was filed is illegal and irrelevant.

A. The amount due Dismukes & Co., for which they hold notes of the Briarfield Coal & Iron Co., is $746.60, and the amount of their credit on open account is 678.26.

Objected to on the ground that the books and accounts are not evidence against these defendants, and any testimony as to the amount claimed to be due on any of the notes which were not due at the time the bill in this case was filed is illegal and irrelevant.

361 Q. Does the statement which you have before you show when the notes matured?

A. Yes, sir.

Q. Look at the account of Cassetty & Co.

Objected to on the ground that the books and accounts are not evidence against the defendants, and any testimony as to the amount claimed to be due on any of the notes which were not due at the time the bill in this case was filed is illegal and irrelevant.

A. There appears to be credited to the Cassity Oil Co. on the books of the Briarfield Coal & Iron Co., on open account, $904.39.

Q. Look at the account of A. Metzger, and state how much is due.

A. That is $167.35.

Q. You say that the amount stated there was an agreed amount between you and Mr. Metzger?

A. Yes, sir.

Q. Please look at the account of Goetter, Weil & Co., and state how much is due them.

Objected to on the ground that the books and accounts are not evidence against the defendants, and the testimony as to the amount claimed, which was not due at the time the bill in this case was filed, is illegal and irrelevant.

A. The amount to the credit of Goetter, Weil & Co. on the books of the company, for which they hold notes, is $1,619.25; the amount to the credit of the same parties on open accounts on the books of the company is $653.11.

Q. Please look at the account of W. F. Vandiver & Co.,
362 and state how much is due them.

A. There appears to the credit of W. F. Vandiver & Co., for which said Vandiver & Co. hold notes, $8,205.53. There appears to the credit of the same parties, on open account on the books of the company, $3,372.32.

Q. Look at the account of Cavenaugh, Barney & Co. and state how much is due them.

A. This account of Cavenaugh, Barney & Co. does not belong in the accounts of the Briarfield Coal & Iron Co. It is an account of W. L. Chambers, trustee, and was made in this way: Said Cavenaugh, Barney & Co. gave a separate order for the manufacture of a lot of seven-inch cut spikes. These spikes were made and about to be shipped to Cavenaugh, Barney & Co., and they discovered that they had made a mistake and asked us to withhold the shipment, which we did, with the understanding that we were to dispose of said spikes for them if we could. This we were unable to do and have been unable to do, and the spikes are in the factory of the Briarfield Coal & Iron Co. at Brierfield, subject to the order of Cavenaugh, Barney & Co.

Counsel for Chambers, trustee, and Marks & Massey, for the parties they represent, moved to exclude the question and the answer on the ground that they are illegal and irrelevant.

Q. Please look at the account of the Cherokee Iron Co. and state how much is due them.

A. The amount is $4,843.07 on open account.

363 Q. Please look at W. M. Butler & Co.'s account and state how much is due them.

A. $212.50 on open account.

Q. Please look at the account of J. Simon & Bro. and state how much is due them.

A. $258.48 on open account.

Q. Please look at the account of the Nashville Trunk Manufactory and state how much is due them.

A. $108.91 on open acc't.

Q. Please look at the account of the Kemper Woolvine Candy & Cracker Co. and state how much is due them.

A. $290.69 on open account.

Q. Please look at the account of Berry, De Moille & Co. and state how much is due them.

A. $585.72.

Q. Please look at the account of J. C. Hurter & Co. and state how much is due them.

A. $406.80, for which they hold notes.

Q. Please look at the account of Jos. Manegold & Co. and state how much is due them.

A. $368.75 on open account.

Counsel for Chambers, trustee, and Marks & Massey, for the parties they represent, objected jointly to all claims and the testimony in relation thereto that were not due at the time the bill was filed in this cause, on the ground that they are illegal and irrelevant; also object separately to all notes and claims that were not due at the time the bill was filed; also object separately to all claims in favor of parties who are not parties to this suit, on the ground that such claims and the testimony in regard thereto are irrelevant and
364 illegal; also object separately to all testimony in regard to such of said claims as are for less than $2,000 in amount, exclusive of interest, on the ground that such testimony and such claims are illegal and irrelevant.

Marks & Massey, for the parties they represent, object further, on the ground that neither the statement from which the witness read nor the books from which the statement was taken are competent evidence against them.

Q. You know that the amounts set out in the schedule of the debts were due by the Briarfield Coal & Iron Co., do you not, Mr. Murrey?

A. I know they were due at the time the books show they were due.

Q. You have personal knowledge of the correctness of those accounts?

A. Yes, sir; I have.

Q. And the amounts set out in this schedule are the amounts that were owing by the Briarfield Coal & Iron Co. to these several parties?

A. Yes, sir; that is my knowledge.

Q. Has any part of those claims been paid or otherwise settled since that statement was made? (Hands witness the statement.)

A. Yes, sir; I know that the following notes have been paid: The State of Alabama, French Nabors, B. B. Lewis, Berry, Williams & Co., Memphis National Bank, W. D. & K Carter, Jr., as stated on the account.

Q. What is the statement which you have been looking at and in regard to which you have been questioned?

365 A. It is a schedule of the indebtedness of the Briarfield Coal & Iron Co., as evidenced by the books of the company, August 2nd, 1887, showing separately the bills payable and the open accounts, and is marked Exhibit "A," and which complainants file herewith as a part of their evidence.

The defendants objected to the statement, and moved to exclude the same on the ground that it is illegal and irrelevant, and on the further ground that the books themselves are the best evidence.

Separate objection by Marks & Massey, for the Briarfield Coal & Iron Co., T. J. Peter, and John G. Murrey, on the ground that neither the books nor the statement are competent evidence against either of them.

Q. Please look at the statement and state which, if any, of the claims therein mentioned have been proved in this court in the case of W. L. Chambers, trustee, against The Briarfield Coal & Iron Co. and others, if you know.

Objected to on the ground that the proceedings in the case of Chambers, trustee, against the said Briarfield Coal & Iron Co. and others are the best evidence of what claims were therein proved.

A. Yes, sir; some of them have been proved.

Q. State which.

A. State of Alabama, French Nabors, B. B. Lewis, City National Bank, Commercial Bank of Selma, John G. Murry, Sloss Furnace Co., Sloss Iron & Steel Co., Pennsylvania Steel Co., Alabama National Bank, W. D. & K. Carter, Jr., Memphis National Bank, J. T. Fitzgerald, Hanover National Bank, & Berry, Williams & Co.

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Q. Look at the account of Hollins, Sons & Co. against the Brierfield Coal and Iron Co., dated Jan. 23, 1889, and state if you know whether the same is correct or not, and how much is owing thereon now.

A. $671.90.

Witness is here handed the following notes: One for $1,002.13, dated Feb. 11, 1887, and payable on Aug. 20 after date, to the order of Hollins, Sons and Co., at the Commercial Bank of Selma, and 2 other notes of same amount and same date, payable to the same parties, at the same place, on the 20th of Sept. and Oct., respectively; also 2 notes dated June 17, 1887, payable on the 3rd day of Dec. after date and 5th Jan., 1888, at the Commercial Bank of Selma, for $1,172.43 each.

Q. Please state by whom these notes were executed.

Thorington, counsel for Chambers, trustee, and Marks and Massie for the parties the- represent, object to each account and each note separately as evidence in this cause, on the ground that they are each illegal and irrelevant testimony in this cause.

A. They were executed by the Brierfield Coal and Iron Co.—T. J. Peter, president.

Witness is here shown a note of J. C. Hurter and Co., of March 1, 1887, for $406.80, with interest from date.

Q. Please state by whom this note was executed.

367 (Same objection by Thorington as above set out.)

A. By the Brierfield Coal and Iron Company—T. J. Peter, president.

Q. Please look at the account of the Cherokee Iron Co. and state whether you know that the am't is correct and how much is due thereon.

(Same objection by Thorington as above set out.)

A. The amount owing thereon, according to our books, is $4,843.07.

Q. Do you consider that correct?

A. Yes, sir; I consider that correct.

Q. Look at the account of J. Simon & Bro. and state how much is due thereon.

(Same objection.)

A. $258.40.

Q. Look at the account of Wm. Butler & Co. & state how much is due thereon.

(Same objection.)

A. $212.50

Q. Look at the account of Jos. Manegold & Co. & state how much is due thereon.

(Same objection.)

A. $368.75.

Q. Please look at the notes handed you and state by whom they were executed.

Witness is here handed 4 notes, dated Feb. 28, 1887, payable on the 1st Oct., 1st Sept., 1st Nov., & 25th Nov., 1887, all payable to Fite, Porter, Lyles & Co.

368 (Same objection.)

A. They were executed by the Brierfield Coal and Iron Co.—T. J. Peter, pres't.

(These notes are for $1,913, $1,900.85, $1,925.14, $359.40.)

Q. Please look at the account shown you of Fite, Porter, Lyles & Co. & state how much is due thereon.

(Same objection.)

A. $3,612.15.

Q. Please look at the account of W. P. Vandiver & Co. and state how much is due thereon.

(Same objection.)

A. $3,372.32.

Q. Please look at the account of Goetter, Weil & Co. & state how much is due thereon.

(Same objection.)

A. Open account, $653.11.

Q. Please look at these notes and state by whom they were executed.

Witness is here handed 2 notes dated Feb. 24, 1887, for $373.30 each, payable on the 25th Aug. & 25 Sept. after date, to the order of Dismukes & Co., at the Commercial Bank of Selma.

(Same objection.)

A. By the Brierfield Coal & Iron Co.—T. J. Peter, president.

Q. Please look at the account of Dismukes & Co. & state how much is due thereon.

(Same objection.)

369 A. On open account, $678.26.

Q. Please look at the account of H. Metzger & state whether the same is correct or not, and what is due.

(Same objection.)

A. The statement is not correct; the am't due is $167.35.

Q. Look at the account of the Kemker-Woolwine Candy & Cracker Co. and state how much is due thereon.

(Same objection.)

A. $290.69.

Q. Look at the account of Berry, Demoville & Co. & state how much is due thereon.

(Same objection.)

A. $585.72.

Q. Look at the account of the Nashville Trunk Manufactory & state how much is due thereon.

(Same objection.)

A. $108.91.

Q. Look at the account of the Cassetty Oil Co. and state how much is due thereon.

(Same objection.)

A. $904.39.

Cross-examination by W. S. THORINGTON, Esq.:

Q. What was the consideration of the notes and accounts payable to Hollins, Sons & Co.?

A. Merchandise, boots, and shoes bought for the company's store.

Q. What was the consideration of the other claims proved, other than Hollins, Sons & Co.?

370 A. They were all for merchandise for the company's store, except the accounts of Cherokee Iron Co., J. C. Hurter & Co., & H. Metzger; that of the Cherokee Iron Co. was for pig-iron used in the rolling mill of the Brierfield Coal & Iron Co.; J. C. Hurter & Co., cotton ties, scrap iron; H. Metzger, scrap iron.

Q. Were those goods sold to the operatives of the company or to the public generally?

Objected to on the ground that the answer called for is irrelevant, and that the persons to whom the goods were sold cannot affect the liability of the Brierfield Coal & Iron Co. to the parties from whom they bought them.

A. They were sold to the public generally.

Q. Were they bought for the purpose of being sold to the public generally?

Objected to on the ground that there is no evidence that the purpose for which they were bought was ever disclosed to the sellers, and the question calls for illegal and irrelevant evidence.

A. Yes, sir; they were bought for that purpose.

Q. Who was in charge of the store during the time these debts were contracted and who ordered the goods?

A. My remembrance is that C. L. Bates was in charge of the store at the time that these debts were made, and that he ordered the goods.

Q. Under what name was the store conducted?

A. Under the name of the Brierfield Coal and Iron Company.

371 Q. Was that the name on the letter-heads and the bill-heads?

A. Yes, sir.

Q. Were any of the agents or representatives of these creditors about the store at the time these goods were ordered?

Objected to on the ground that it is irrelevant.

A. Yes, sir; the agents of most of these parties used to visit the store periodically for the purpose of selling goods to the company.

Q. What was the character of the goods that you got from Hollins, Bone & Co.?

A. Boots and shoes.

Q. What was the character of the goods bought from Fite, Porter, Lyles & Co.?

A. Dry goods.

Q. Goetter, Weil and Co.?

A. Dry goods.

Q. H. Metzger?

A. Scrap iron.

Q. W. F. Vandiver & Co.?

A. Groceries.

Q. Have you any offset against Vandiver & Co.'s claim?

A. No; as I have testified in here (referring to former testimony), the only offset claim was deducted by me.

Q. What was the Cavanaugh, Barney & Co. claim for?

A. It was for money paid by them for nails, as is hereinabove stated.

Q. What was the consideration of the Cherokee Iron Company's claim?

A. Pig-iron.

Q. W. M. Butler & Co.?

A. Tobacco & cigars.

Q. Nashville Trunk Manufactory?

A. Trunks & satchels, I presume.

Q. Kemker-Woolwine Candy & Cracker Co.?

372 A. Cakes and crackers and confectioneries generally.

Q. Berry, Demoville & Co.?
A. Bitters, drugs, &c.
Q. J. C. Hurter & Co.?
A. Cotton ties, scrap iron.
Q. Jos. Manegold & Co.?
A. Confectioneries.
Q. What was the date of the deed of trust in this cause—the first deed of trust?

Objected to on the ground that the deed itself is the best evidence.

A. Sept. 1, 1882.

A certified copy of the deed of trust is now offered in evidence.

Q. What was the date of the second deed of trust or further assurance?

Objected to on the same ground.

A. July 29, 1887.

It is agreed between the parties that Exhibit A to the original bill, being the further assurance, dated 29th July, 1887, and which sets out a copy of the original deed of trust executed by the Brierfield Coal and Iron Co. on the 1st day of Sept., 1882, shall be received as evidence in this cause, subject to the correction of any errors therein, if any, by comparison with the original. Said exhibit shall be taken and treated as evidence of both the original deed of trust and the further assurance, subject to corrections as above stated.

373 Q. This company was engaged in the business of carrying on a store at Brierfield for which these goods were bought?
A. It was.
Q. And all of these goods were bought subsequent to 1882, were they not?
A. Yes, sir.
Q. All of these debts contracted since that time?
A. Yes, sir.

Redirect examination:

Q. Did Mr. Bates have any authority from the company to order goods for the stores?

Objected to on the ground that it is illegal.

A. Yes, sir.
Q. Were these stores kept open by the company and yourself in connection with the business operations there at Brierfield?

Objected to on the ground that it is illegal.

A. Yes, sir; in connection with its other business.
Q. Was this merchandise sold in any part by you to the employés of the company in payment of wages?
A. No. The employés of the company understood perfectly well

that they could draw their wages and patronize where they saw fit; the company kept no account in the store with the employés.

Examination closed.

MONDAY, *March* 25, 1889.

Reference continued — Tuesday, March 12, 1889, at 10 o'clock.

Present: The same parties as the day before.

Examination of Mr. T. J. Peter.

Mr. T. J. PETER, being duly sworn, testifies as follows:

374 Examination by Mr. A. T. LONDON:

Q. You were the president of the Brierfield Coal & Iron Company?

A. Yes, sir.

Q. How many shares of the capital stock did you subscribe for?

A. One hundred and twenty thousand dollars—twelve hundred shares.

Q. Twelve hundred shares?

A. Yes, sir.

Q. Where is the original contract of subscription to be found? In the books of the company?

A. It is to be found in the original record of subscription.

Q. Is that contained in the book of minutes?

A. That book was devoted to the organization of the company.

Q. Is that book here?

A. Yes, sir.

Q. Is this the book?

A. No, sir.

Q. I would like to have that book. Please look at the book and state what the original contract of subscription was (handing witness book).

Objection by the trustee to the evidence sought to be adduced as illegal and irrelevant.

A. Shall I read it?

Q. Yes, sir.

A. (Reading from page- 23–'4 of small book called the original book:) In accordance with the resolution adopted by the stockholders of the Brierfield Coal & Iron Company, held at Brierfield on May 4th, 1882, and the direction of the directors, held at same place on the evening of the same day, I, T. J. Peter, president of said company, do now receive subscriptions to the capital stock of said company upon the following terms, as required so to do, both by the stockholders and directors: For the purpose of raising the sum of four hundred and fifty thousand dollars with which to purchase certain coal and iron properties, to open and operate coal and iron ore

mines, to repair rolling mill, to erect coke ovens and blast
375 furnace, to produce coal and manufacture coke and iron, to build about five miles of railroad tracks to connect the coal mines, coke ovens, and iron ore banks with the blast furnace and rolling mill: Now, therefore, the undersigned agree to pay to said company the amounts respectively set opposite our names in such sums and at such times as the directors of the said company may require and to receive from said company for each nine hundred dollars paid in the sum of one thousand dollars in a six per cent. mortgage bond of said company and nine hundred dollars in the capital stock of said company, not more than — per centum of each subscription to be called for during one month:

T. J. Peter and associates, one hundred and twenty thousand —.
E. A. Peter, fifty thousand dollars.
R. L. McCalley, five thousand dollars.
C. C. Huckabee, fifteen thousand dollars.
G. I. Seney and associates, seventy-five thousand dollars.
C. S. Plumb, fifty thousand dollars.
Plumb & Hood, fifty thousand dollars.
Justin S. Morrill, ten thousand dollars.

Q. Is this paper the original subscription list to the stock of the company?

A. It is the original subscription list.

Q. And that is the subscription that was reported to the judge of probate of Bibb county?

A. No, sir; all of these persons had authorized me to make these subscriptions in their names except Mr. Huckabee and Mr. McCalley, and in the original subscription I subscribed for all of them except Huckabee and McCalley, who subscribed for themselves. The original subscription is on page 11 of this book (reading therefrom): In accordance with the order of John S. Gardner, Esq., judge of probate of Bibb county, in the State of Alabama, to the undersigned
"as a board of corporators" of the "Brierfield Coal & Iron
376 Company," the undersigned gave the notice of the times and places of opening the books of subscription to the capital stock of the said company, and on May 4th, 1882, at the village of Brierfield, open- books of subscription to the capital stock of said company as follows, and received the following *bona fide* subscriptions:

The undersigned respectively subscribe the amounts set opposite their names to the capital stock of the Brierfield Coal & Iron Company on the terms to be provided by directors:

T. J. Peter, one hundred and twenty thousand dollars.
E. A. Peter, fifty thousand dollars.
C. S. Plumb, fifty thousand dollars.
Plumb & Hood, fifty thousand dollars.
Samuel Thomas & associates, seventy-five thousand dollars.
Justin S. Morrill, ten thousand dollars.
C. C. Huckabee, fifteen thousand dollars.
R. L. McCally, five thousand dollars.

I made all the subscriptions there except Mr. Huckabee's and Mr.

McCally's, who made them for themselves, I being authorized to make the subscriptions at that time; and afterwards, for fear some question might arise, I drew up the subscription as of that date, the same date as that of page 23, and except Mrs. E. A. Peter, whose name I signed, all the others subscribed for themselves.

Q. The subscription list on page 11 was the one that was reported to the probate judge?

A. Yes, sir.

Q. The other subscription on page 23 you afterwards prepared yourself, and it was signed by the parties?

A. Except Mrs. Peter, whose name I signed.

Q. That was subsequent to the organization of the company?

A. Yes, sir; although made as of the same date, both of May 4th.

Q. The second subscription list was made after the company had been organized?

A. Yes, sir.

Q. Were stock and bonds issued to the several subscribers
377 and their issuance according to the second subscription paper?

A. Yes, sir; as they paid their money in.

Q. Have any certificates of stock been issued to the parties who have not paid in their full subscriptions?

A. Yes, sir.

Q. Have you any means of ascertaining to whom?

A. Mr. Murray's testimony on the reference in the case of Chambers against The Brierfield Coal & Iron Company states the facts. That of course is taken from the books. I cannot remember figures, you know. Hardly any of them paid in full except Mrs. Peter. Mr. McCally's was paid in full.

Q. Mrs. Peter was your wife, Major?

A. Yes, sir.

Q. She was at the *the* time these subscriptions were made?

A. Yes.

Q. Who is Mrs. C. S. Plumb?

A. She is the wife of Preston B. Plumb.

Q. In the deposition of Mr. Murray, referred to by you, he states that you paid on account of your subscription of twelve hundred shares $83,640.85.

A. At that time; since that time I have paid it in full.

Q. Of what was that $83,640.85 composed? Was any part of it for coupons on the bonds?

A. I bought from the company, and paid for them at ninety cents on the dollar, seventy-one first-mortgage bonds of one thousand dollars each, and in payment of my stock subscription I used the coupons on those 71 bonds as they matured, in April and October, 1883, April and October, 1884, April and October, 1885, April and October, 1886, and April, 1887, amounting to $19,170. For the remainder of the amount of $16,710, which I paid in coupons, *were* borrowed from my wife, which had matured on her bonds. The remainder of the payment of the subscription, amounting to $83,640.85, was paid in cash. The coupons had all matured at the

time they were turned over to the company as payment of stock subscription.

378 Q. You stated that you had since paid the whole of your stock subscription.

A. Yes, sir.

Q. Please explain what you mean.

A. Before the property of the company passed into the hands of a trustee, while still under the control of the company, I endorsed many notes of the company and used my bonds as collateral with various banks. After the board had passed a resolution that I should not be called upon to pay the remaining amount I owed on my stock subscription until I was relieved of these endorsements or that I might pay these amounts and receive credit on account of my stock subscription, I have since paid obligations of the company amounting to the remainder of my stock subscription.

Q. Is the testimony of Mr. Murray taken on the reference in the case of Chambers *vs.* Brierfield Coal & Iron Company in regard to the making of these notes originally, which you say you paid, substantially correct?

A. I think it is, sir.

Q. Is this what you testified to on the former reference?

A. Yes, sir.

Q. The board of directors passed a resolution in reference to your paying these notes of which you have spoken and the application of such payment to the discharge of your stock subscription?

A. Yes, sir.

Q. When was that resolution passed?

A. July 29, 1887.

379 Q. At that time the Brierfield Coal & Iron Company — insolvent, was it?

Objection by the defendants on the ground of illegality and irrelevancy.

A. I don't think the Brierfield Coal & Iron Company was ever insolvent.

Q. How long after this resolution was passed before the property went into the hands of Mr. Plumb as trustee?

Objection by the defendants on the ground of illegality and irrelevancy.

A. I think it was the second of August.

Q. Thereafter?

A. Yes, sir.

Q. On this same day that this resolution was passed authorizing the application of your payment of these notes to your stock subscription didn't the directors pass a resolution authorizing the execution of a deed of further assurance covering every piece of tangible and intangible property owned?

Objection by defendant- on the ground that the minutes of *of* the proceedings of the board of directors was the best evidence of what

the deed was; and, further, on the grounds of illegality and irrelevancy.

A. The directors at the same meeting passed a resolution to give a deed of further assurance, as provided in the original trust deed.

380 Q. This resolution last referred to is contained in the minutes of the same meeting at which — the resolution in reference to the payment of your stock subscription?

Objection by defendant on the ground that the minutes of the proceedings of the board of directors was the best evidence of what the deed was, and further on the ground of illegality and irrelevancy.

A. Yes, sir.

Q. Please give the pages of the record of minutes where these proceedings are to be found.

A. 31, 32, and 33.

Q. On what day did the trustee make demand for the possession of the property?

A. August second, I think.

Q. When did the Brierfield Coal & Iron Company first make default in its payments?

A. August second. It had made no default up to that time. It had notes maturing August second which it was unable to meet.

Q. Had not the company, previous to that time, asked extensions from its creditors?

A. ——.

Objection to the question because it calls for evidence which is illegal and irrelevant.

Q. Who was present at the meeting of the directors that passed the resolution in regard to your stock subscription?

A. Mr. Murray, E. T. Peter, and myself.

Q. Who is E. T. Peter?

A. He is my son.

Q. Who voted for that resolution?

A. They all voted for it; it was adopted unanimously.

381 Q. On the day that resolution was adopted what amount of first-mortgage bonds did the Brierfield Coal and Iron Company have outstanding?

A. It had five hundred thousand.

Q. How much of debt other than bonds?

A. About two hundred thousand.

Q. The statement, Exhibit A, to the deposition of Mr. Murray is substantially correct, is it not?

A. Yes, sir.

Q. That shows $212,735.18?

A. There was ten thousand of that which was secured by nails as collateral---practically reduced it to two hundred thousand dollars.

Q. Since that resolution was passed the company has done no business, has it?

A. No, sir; not since the trustee took possession of the property.

Q. That was four days after the resolution was passed by the directors?

A. About four days; yes, sir.

Q. Was Mr. Plumb at Brierfield about the 29th of July?

A. No, sir; Senator Morgan was there as his attorney.

Q. Was the further assurance executed at the instance of Senator Morgan, representing Mr. Plumb, trustee?

A. Yes, sir; on his demand.

Q. On his demand?

A. Yes, sir.

Q. Prior to the 29th of July, in order to conduct the business of the company, had you not been compelled to use your private credit to secure money?

A. While as endorser—yes; and to pledge my individual bonds.

382 Q. Had not Mr. Plumb also been compelled to use his private credit or bonds?

A. He endorsed the paper of the company to the Hanover National Bank of New York and the Pennsylvania Steel Company of Harrisburgh. He was a co-endorser with me.

Q. What relation, if any, exists between you and Senator Plumb? Are you connected by blood or marriage?

A. No; neither.

Q. Your families are not related?

A. No, sir.

Q. Can you look at the statement, Exhibit A, and state what notes or other obligations of the company you discharged subsequent to that resolution?

A. Yes, sir.

Q. And when you paid them?

A. When I paid them I could not say.

Q. Were the payments all made after the second of August?

A. It all appears in my evidence in the case of Chambers against the company—the exact date of payment and orders of the parties stating that they had been paid. I paid these obligations to the Commercial Bank of Selma.

Q. State the amount.

A. One note five thousand dollars, one thirty-five hundred, one twenty-five hundred, one seventy-five hundred, and one four thousand dollars; the Alabama National Bank, a note for thirty-five hundred and one for forty-five hundred; three notes to J. T.

383 Fitzgerald—one six thousand, one six thousand, and one three thousand dollars.

Q. Each of those debts that you state that you have paid were secured by the pledges of the bonds of the company, were they not?

A. They were secured by the pledges of my individual bonds.

Q. Were they bonds of the Brierfield Coal & Iron Company?

A. They were made by the company.

Q. Have those bonds been proved against the company in the case of Chambers against The Brierfield Coal & Iron Company?

A. Have they been proved?

Q. Yes.

A. Yes, sir.

Q. By whom were they proved?

A. By the persons holding them.

Q. Were the amounts paid by you for bonds—were they proved in that case?

A. Yes, sir.

Q. You now claim the benefit to be received from those bonds in that case?

A. No, sir; I don't. They held the bonds; they delivered up the paper of the company and hold my individual paper, with those bonds held as collateral.

Q. You have paid the company's paper in the hands of several banks and Mr. Fitzgerald by giving your individual paper therefor?

A. Yes, sir.

Q. The company's paper was delivered up and the com-
384 pany discharged from the debt? Except in the manner that you have stated, the balance of the amount due on your original subscription has never been paid?

A. No, sir.

Q. At the time that the further assurance was made by the company were the goods in the store the same that had been made at the time the mortgage was executed originally?

A. Oh, no; goods are, of course, changing every day, some going out and others taking their places.

Q. The subscription list was not included in the original mortgage?

Objection on the ground that the mortgage itself shows what property is conveyed in it.

A. I don't know.

Q. Can you look at the mortgage of further assurance or have you any papers by which you can inform yourself as to what property was originally conveyed to the corporation upon its organization?

A. I cannot state now.

Q. Is there any means by which you could ascertain?

A. I do not think there is.

Q. Upon the original organization of the company was not the property that was purchased from Col. Huckabee and Mr. McCally the only property that the corporation had?

A. I don't know that it had any property at its organiza-
385 tion. It was organized for the purpose of acquiring property, and Col. Huckabee's property was bought for the organization, and contracting for the Huckabee property was what made his debt, but the debt was made after the organization.

Q. Do the company's books show when the different parcels of land were purchased, or have the company any record of any kind which will show?

A. The deeds themselves will show when the property was purchased, and the company's books will show the date of the payment.

Q. The Bibb Furnace property was partly paid for in receiver's certificates, as in the Chambers case, was it not?

A. The balance of five thousand dollars unpaid when the property passed into the hands of the trustee. More than that, though about thirteen thousand dollars, the payment of which was provided for by issuance of trustee certificates.

Q. Was any other of the land paid for by the issue of trustee certificates after the suit was begun in this court, in which Chambers, trustee, is plaintiff?

A. There was a remainder paid to the State of Alabama, to French Nabors and to B. B. Lewis, executrix.

Q. And those amounts are shown in the accounts of Mr. Chambers, as trustee, in his report in the other case?

A. Yes, sir.

386 Q. How was Mrs. Peter's stock of fifty thousand dollars paid?

A. It was paid in cash.

Q. How much did she receive from the company by way of interest on the bonds held by her?

A. She never received anything in cash.

Q. What did she receive?

A. She never received anything. I used a portion of her coupons in paying my subscription. The remainder she held, and has proved them in court as a claim against the property.

Q. Is there not a Mrs. Williams who is a present holder?

A. Of stock; yes sir.

Q. How much stock does she hold?

A. I don't remember now.

Q. Is she not a holder of some of the bonds?

A. No; Mrs. Williams is my sister. I borrowed money from her and gave her certificates of my stock to hold as collateral for the money which I had borrowed from her.

Q. Who is A. O. Beebe?

A. He was at that time private secretary of Samuel Thomas. He is still connected with the East Tennessee and Georgia R. R. as transfer clerk, and has his office with Samuel Thomas in the Schemerhorn building.

Q. Is he still the holder of any stock in the company?

A. I suppose it still stands in his name. He never paid anything. General Thomas paid all the money and directed that

387 all the stock and bonds should be issued in the name of A. O. Beebe for Gen. Thomas, G. I. Seney, and C. S. Brice. Gen'l Thomas paid whatever money was paid for the bonds and stock which were issued in the name of A. O. Beebe.

Q. The stock issued in the name of A. O. Beebe, then, was the

stock which was referred to by Mr. Murray as having been subscribed for or taken by Samuel Thomas, Calvin S. Brice, and George I. Seney?

A. Yes, sir.

Q. Bonds were issued to these several parties under the new and subsequent subscription in proportion to the relative amounts of stock held by them respectively, were they not?

A. Yes, sir.

Q. Can you state approximately the amount of money which was expended for the purchase of land by the company after its organization?

A. No; I cannot. The trial balance will show that when you have the books. Mr. Murray can bring you that last trial balance.

Q. At the time the resolution was passed in reference to your stock subscription, on July 29, 1887, had you been informed or was it not in contemplation at that time to turn over the possession and management of all the company's property to Mr. Plumb as trustee or as agent?

Objection on the ground that the testimony called for is illegal and irrelevant.

388 A. No; I don't think it was.

Q. Was not the company at that time suffering from pecuniary embarrassment?

Objection on the ground that the testimony called for is illegal and irrelevant.

A. I expected on the first of August to obtain loans and renewals which would carry us along. These I failed to obtain.

Q. The only source from which you anticipated securing the necessary means of conducting the operations of the company were from *from* loans or extensions outside of the assets of the company, were they not?

Objection on the ground that the testimony called for is illegal and irrelevant.

A. I had several plans in order to relieve the company of its necessities. I was satisfied that if we could tide over till autumn we could put the company on its feet; but there was such a tight money market that no money could be got anywhere. The paper of the Sloss Furnace Company matured on the second of August. They refused to extend their paper. The loans which I expected to obtain the first of August from certain banks I failed to obtain. I thought it had become necessary to protect all the interests
389 of the company and put the property into the hands of a trustee.

Q. When were you informed that the Sloss Furnace Company would refuse to extend its paper?

A. On the first of August.

Q. At the time the resolution was passed you did not know whether they would or not?

A. No; I didn't. I was satisfied they would extend.

Q. Had you requested the extension?

A. Not up to that time. I had hoped to obtain money so as to make part payment and was satisfied they would then make the extension of the remainder. On the first of August I was notified from the banks from which I expected to receive money that it was impossible for them to let me have any money.

Q. You have stated that you have never considered that the Brierfield Coal & Iron Company was insolvent; please explain what you mean by that.

A. The Brierfield Coal & Iron Company has invested eight hundred thousand dollars in money in property. I consider to-day the property worth more money than that. If I had the money I would pay for it and take the property myself.

Q. You say that eight hundred thousand dollars has been invested?

A. Yes, sir.

Q. Did you not state that the company made no losses prior to its suspension?

A. No; I did not. I should say there has been eight hun-
390 dred thousand capital invested without any reference to losses.

Q. How much losses did the company make prior to the second day of August?

A. I cannot answer that question without reference to the books. I think about thirty thousand dollars; that the operations of the company showed losses of thirty thousand.

Q. The company realized about four hundred and fifty thousand dollars from the bonds, did it not?

A. Yes, sir.

Q. The company owed at the time the assets were turned over to Mr. Plumb about two hundred thousand dollars?

A. Yes, sir.

Q. So that the company realized from the stock subscription about one hundred and fifty thousand dollar-?

A. I don't think they realized quite that much in cash. There were awhile that we made some money. I don't mean that the thirty thousand dollars was over and above the money that was made. I mean that in the last year of its operations, when nails had depressed to a very low figure, we suffered to my best recollection an actual loss of thirty thousand dollars.

Q. You say you think the company did not realize as much as one hundred and fifty thousand dollars from the subscription list?

A. No; I can tell you if you will take the figures down. (The figures being taken down, the witness states that they received
391 about one hundred and seventy-four thousand dollars in cash on stock subscription.)

Q. And sixty-four thousand and fifty dollars were paid in coupons?

A. Yes, sir.

Q. The books show, then, an investment of about eight hundred thousand dollars?

A. That is my best recollection. Yes.

Q. Composed of the following items: From bonds, $450,000; from subscription, $174,000, and $200,000 of outside unsecured indebtedness from creditors?

A. Yes.

Q. Can you state by reference to any papers or deposition who are at present holders of the bonds who are not also stockholders in the corporation?

Objection on the ground of illegality and irrelevancy and that the papers or deposition which witness was required to consult are the best evidence of the fact called for.

A. I think I can.

Q. Please do so.

Objection on the ground of illegality and irrelevancy and that the papers or depositions are the best evidence of the fact called for.

A. Mrs. Pomeroy holds nine bonds; the Alabama National Bank holds nine bonds; the State National Bank holds twenty-eight bonds; the Commercial Bank holds twenty-six bonds; J. T. Fitzgerald holds twenty bonds. That is all that I know anything of.

392 Q. Were you examined as a witness on the reference in the case of W. L. Chambers, trustee, *vs.* The Brierfield Coal & Iron Company *et al.*?

A. I was.

Q. Your deposition taken upon that examination, so far as it goes, is correct?

A. It is.

Q. Do you occupy any relation to the corporation or to Mr. Chambers as trustee now?

A. I am still president of the company now and agent of the trustee.

Moved to exclude the answer on the ground of irrelevancy.

Q. Will you please have the books of the company, if in your possession or control, produced before the commissioner, and when can you have them here?

A. I will produce such books as you desire. I can have them here any time after this week when convenient.

Witness is here handed four acceptances dated March 7, 1887, drawn by W. F. Vandiver & Co. on the Brierfield Coal & Iron Company, and payable on the fifth and twentieth of August and the fifth and twentieth of September next, and being, respectively, for $1,112.81, $1,207.87, $1,207.88, and $1,207.88, and also three notes dated May 24, 1887, and payable to W. F. Vandiver & Co. on the fifth of September, the eighteenth of November, and the fifth of December, 1887, for $1,140.58, $1,143.75, and $1,184.76.

Q. Please look at the acceptances and notes handed you and
393 state by whom the acceptances were made and the notes executed.

Objection as to the notes on the ground that they are irrelevant.

A. The notes were made and the acceptances given by the Brierfield Coal & Iron Company.

Motion to exclude the answer as to notes on the ground that they are irrelevant.

Q. By its duly authorized officer?
A. Yes, sir.

Objection on the grounds of irrelevancy.

Witness is here handed two notes payable to Goetter, Weil & Co. on the first and fifteenth days of October, respectively, 1887, for $790.45 and $825.80.

Q. By whom were these notes made?
A. By the Brierfield Coal & Iron Company. They were actually executed by Mr. Murray. He was authorized to do so by me. He signed my name as president, and had authority to do so.

Motion to exclude all the testimony of the witness in reference to the indebtedness or claims of Goetter, Weil & Co. and Vandiver & Co. on the ground that it is illegal and irrelevant and as inadmissible in this cause.

It is admitted that Vandiver & Co. are residents of the State of Alabama, Montgomery county.

Q. Are the subscriptions on page 11, with the exception of Mr. Huckabee's and Mr. McCally's, in your handwriting?
A. Yes, sir.

394 Objection on the ground of illegality and irrelevancy.

Q. Who constituted Plumb and Hood?
A. Preston P. Plumb and Calvin Hood.
Q. C. S. Plumb, was she married woman at this time?
A. She is the wife of Preston P. Plumb, who resides in Emporia, Kansas.
Q. Who paid anything on that original subscription before the report was made to the probate judge?

Objection on the ground of irrelevancy.

A. All of them had paid some money.
Q. Can you specify what each or any of them paid?
A. I don't remember now.

Objection to question on the grounds of irrelevancy.

Q. Do the books of the company show?

Objection on the ground of irrelevancy.

A. I don't think they do, because there were no books of the com-

A. They are in the safe of the company at Brierfield, in the possession of the trustee.

398 Q. Can you produce them?

A. I can.

Q. I would like to have them with the books of the company.

Objection to the production of the deeds on the ground of irrelevancy.

It is agreed between counsel for the respective parties that the depositions taken on the reference in the case of W. L. Chambers, trustee, *vs.* Brierfield Coal & Iron Company *et al.*, # 103 in this court, together with the exhibits, books, and records, may be used as evidence in this cause by complainants and defendants, with the right of either party to object on account of *of* irrelevance of any part thereof. It is further agreed that any part of the record in the case of W. L. Chambers, trustee, *vs.* Brierfield Coal & Iron Company, # 103 in this court, may be read in evidence in this cause by any of the parties hereto, subject to objection on account of its irrelevancy or sufficiency as evidence, but no objection is to be made as a matter of form.

It is moved to exclude all parts of the testimony of the witness relating to the legality or regularity of the organization of the Brierfield Coal & Iron Company on the ground that the complainants in this cause recognized and dealt with it as a corporation and instituted this suit against it as such corporation, and are therefore estopped from inquiring into this question, and also because

399 the legality and regularity of the organization of said company can only be inquired into in a direct proceeding in the name of the State and not in a collateral proceeding like this, and defendants also move to exclude all that part of the testimony of the witness in relation to the execution and contents of the original deed of trust and the deed of further assurance on the ground that none of the claims of the complainants in this cause were in existence at the time *at the time* of the execution of the original deed of trust, but all arose long subsequent thereto.

Cross-examination by Mr. SMITH:

Q. Major, look at the subscription book, on page 11, about which you have been examined, and state whether that is the original subscription list had preliminary to the organization of the company.

A. Yes, sir.

Q. Is that the subscription list on which the organization of the company was based?

A. Yes, sir.

Q. Was a copy of that subscription list filed in the probate court of Bibb county?

A. Yes; I think so.

Q. Your best recollection is that that was filed?

A. Yes, sir.

Q. Turn to page 23 of the book and see the second list there,

about which you have testified, and state when that subscription was signed.

A. It was signed within a few days after May 4. I don't
400 remember the exact date. I went East and saw these parties and obtained their signatures—to Washington and New York.

Q. This last list, then, was signed after the organization of the company, was it not?

A. Yes, sir.

Q. It was not the subscription upon which the organization was based?

A. No, sir; it was intended to take the place of that.

Cross-examination by Mr. THORINGTON:

Q. At the time of the execution of the original deed of trust and issue of bonds did the Brierfield Coal & Iron Company owe any debts?

A. No, sir.

Objection on the ground of irrelevancy.

Q. Do you know of any fraudulent intention or purpose with which that deed of trust was made and executed?

Objection on the ground of illegality and irrelevancy.

A. It was made in entirely good faith.

Move to exclude the answer on the ground of illegality and irrelevancy.

Q. State with what purpose and intent that deed of trust was executed to the trustee.

Objection on the ground of illegality and irrelevancy.

A. It was made for the purpose of raising money to invest in property.

Q. What was paid for all those bonds by the bondholders?
401 A. Ninety per cent. of their par value. Nine hundred dollars for one thousand and the accrued interest, whatever that was.

Q. What was done with that money received from the sale of bonds?

A. It was invested in property.

Q. In what manner?

A. Purchasing real estate, building rolling mill, nail factory, foundry, and machine shop, blacksmith shop, storehouse, and opening both coal mines and ore banks, building furnace, and various other business pertaining to the development of the property.

Q. You stated in the examination-in-chief that eight hundred thousand dollars went into the plant. Was it not, in fact, nearly nine hundred thousand dollars?

Objection on the ground of irrelevancy.

A. The books show about nine hundred thousand, but in that was included sixty-four thousand of interest and this loss, amounting to nearly thirty thousand dollars. Of course, the people who put *there* money in were entitled to interest, and notwithstanding—what I mean to say is, exclusive of *of* bonds and loss which occurred in the last year of operation, the books show still about eight hundred thousand dollars invested in property.

Q. At the time of the execution of that deed of trust was
402 it in contemplation by the officers or stockholders that debts would be contracted by the company which it was intended to defeat by the execution of that deed of trust?

Objection on the ground of illegality and irrelevancy.

A. It certainly was not.

Q. How much money was invested in that nail factory?

A. I cannot answer that question.

Q. Can you approximate?

A. I would rather not answer that question; I cannot carry figures in my mind. The trial balance will show the correct amount.

Q. What was the result of that investment, Major?

A. Nails had been selling at about $3.25 per keg for several years prior to the time we commenced operations, and in this there was a clear profit of one dollar a keg. Nails were selling the very day we commenced operations at $3.25 per keg. Within 90 days after we commenced operations nails commenced to depreciate in value. Shortly afterwards the steel nail came into the market and materially diminished the price of iron nails. We were making iron nails. The result was that during the last year of our operations nails sold at two dollars per keg, which was an actual loss to us of twenty cents per keg. We continued to produce, hoping nails would advance, until we were finally forced to suspend because we
403 could not meet our paper. This plant was capable of producing 600 kegs per day.

Q. When did the company first become embarrassed and unable to meet its obligations as they matured?

A. Well, I would say from recollection, a year before, within a year from the time we suspended. If the stockholders had all paid up their assessments I think we could have gone through without any trouble.

Q. Was any effort made to collect these assessments?

A. I made frequent efforts.

Q. State, Major, the circumstances under which that deed of further assurance came to be executed.

A. In July, 1887, the money market become very close and I apprehended that we might have trouble. I wrote to the stockholders, and saw them all personally and urged upon them to pay on account of their stock subscriptions. They all stated that it was impossible for them to raise money at that time, and near the last day of July I telegraphed Senator Plumb that if they did not pay their stock subscriptions, and if I did not obtain renewals or the loans I was negotiating that we would be unable to meet our paper. He tele-

graphed or wrote to Senator Morgan, and Senator Morgan came to Brierfield, as his attorney, and demanded this deed of further assurance.

404 & 405 Q. It was executed in pursuance of that demand?

A. It was executed in pursuance of that demand.

Q. In executing that deed of further assurance was there any intention or purpose on the part of the officers or stockholders of the company to defeat or defraud, or was it executed with the *the* intent and purpose of carrying more fully into effect the first deed of trust?

A. There was certainly no intention to defraud any of the creditors. We made the deed because we thought we had to do so under the original trust deed.

Q. Do you know under whose advice, if any, the suit of Chambers, trustee, against The Brierfield Coal & Iron Company was instituted in this court?

Objection on the ground of irrelevancy and illegality.

A. Under the advice of Senator Morgan.

Q. Senator Morgan was the attorney and Counsel for Senator Plumb?

A. Yes, sir.

Q. Do you know of any fraudulent intent or purpose on the part of Senator Plumb in having this suit instituted in this court?

Objection on the ground of illegality and irrelevancy.

A. I know that it was the intention and expectation that it was the best way to protect the interests of the bondholders and creditors and stockholders. We thought if that were not done there were many attachments which would fritter away the entire

406 value of the property. We thought if we could prevent that the property would probably sell for enough to pay up; but there has been such hard times in the iron business and such depression in that class of property that we abandoned all hope.

Q. The bonds issued by the company and secured by those deeds of trust have never been satisfied, never been paid, have they?

A. No, sir.

Cross-examination by Mr. MARKS:

Q. In regard to this resolution of the board of directors and your endorsement of certain paper of the company—at the time those endorsements were made by you were they not made with the verbal assurance that in case you had to pay them the amount paid by you could be credited by you on your stock subscription?

Objection on the ground of illegality and irrelevancy.

A. Yes, sir; the assurance was given me by every director and every stockholder.

Q. Was it on the strength of these assurances that the endorsements were made?

Objection on the ground of illegality and irrelevancy.

A. Yes, sir.

Q. Was this resolution concerning which you have been questioned made in accordance with these promises?

Objection on the ground of illegality and irrelevancy.

A. It was.

407 Q. Where does Mrs. E. A. Peter reside?

A. Waukesha county, Wis.

Q. What is the residence of Mrs. Plumb?

A. Emporia, Kansas.

Redirect examination by Mr. LONDON:

Q. At the time the Brierfield Coal & Iron Company stockholders passed the resolution authorizing the issue of five hundred thousand dollars of first-mortgage bonds did not these same stockholders at that time owe on account of their stock subscription a sum in excess of two hundred and fifty thousand dollars which was unpaid?

Objection on the ground of illegality and irrelevancy.

A. They did not owe anything at that time. They had paid all assessments made up to that time.

Q. Had they not subscribed for three hundred and seventy-five thousand dollars of stock, and at the time the resolution was passed by them had they paid more than one hundred and twenty-five thousand dollars of their subscription?

Objection on the ground of illegality and irrelevancy.

A. I don't remember now how much they had paid. They had paid the original twenty per cent. and any other call that had been made. There had been no call made that was not paid.

Q. Can you inform me the dates on which calls were made on the stockholders from the books?

A. No; I cannot.

Objection on the ground of illegality and irrelevancy.

Q. Do the records of the company show the dates?

408 Objection on the ground of illegality and irrelevancy.

A. No; the records of the company only show when the calls were made, after they had paid and received their bonds. You understand the theory was that they were to receive bonds and stock as they made payment—as they made payment up to the sum of four hundred and fifty thousand dollars—and twenty per cent. in addition — they received stock and bonds. It was then found that there was not money enough to carry out our plans, and an additional amount was called for by the board of directors on the stock, and the records show these additional amounts that were called for.

Q. Then in the original organization it was contemplated that stockholders should receive bonds and stock on the subscription that was made?

Objection on the ground of illegality and irrelevancy and the further ground that the contract of subscription is shown to be in writing and is the best evidence, and parol evidence is inadmissible to contradict it.

A. That was the expectation of the subscribers to the stock.

Motion to exclude the answer on — grounds as objection to the question.

Q. What was that expectation?

A. That they would receive bonds and stock—in other words, that for every thousand dollars paid in they were to receive a thousand dollars in bonds and nine hundred dollars in stock.

Objection to the question, and motion to exclude the last
409 answer on the ground of illegality and irrelevancy and further ground that the contract of subscription, which is shown to be in writing, is the best evidence.

Q. Please look at the records shown you on page 26, at the bottom. Is that the first assessment that was ever levied on the stock?

A. It was the first assessment that was ever levied over and above the ninety per cent.

Q. For the ninety per cent. of which you speak bonds were issued, were they not?

A. Bonds and stock were issued for it at the same time.

Q. For the ninety per cent. paid in then and the twenty per cent paid in bonds and stock were both issued?

Objection on the ground of irrelevancy and illegality.

A. Yes.

Q. Was the ninety per cent. paid in prior to the issue of the bonds?

A. A good deal of it was and money was paid in before any bonds or stock was issued to the stockholders, and after the bonds were issued bonds and stock were issued to the stockholders for the amount of money paid in, and as they made payments afterwards bonds and stock were issued in proportion to their payments.

Objection on the ground of illegality and irrelevancy.

Q. These issues of stock and bonds were in the proportions that you have stated, nine hundred dollars of stock and one thousand dollars of bonds for each one thousand dollars paid in?

410 Objection on the ground of illegality and irrelevancy.

A. Yes, sir.

Q. Do the books of the company show how much money had been paid in by the subscribers before the issue of the bonds?

Objection on the ground of illegality and irrelevancy.

A. Yes, sir; I think they will.

Q. At the time the bonds were issued or authorized to be issued

the bondholders and stockholders were the same persons, were they not?

A. Yes, sir.

Q. And the bonds authorized to be issued were issued to the subscribers to the stock in the manner that you have stated?

A. Were issued to the subscribers in the manner that I have stated; yes, sir.

Q. When was the first assessment levied on the stock?

A. The first additional that I have mentioned was made July 9, 1884. Prior to that time all stock and bonds had been issued and the bonds paid for at 90c. on the dollar at that time. Now, an additional levy was made on July 9 of twenty per cent.

Q. Will you please examine the books and tell me what assessments were levied, and the dates, on the stock of the company?

A. Well, twenty per cent. July 9, 1884; 30 % January 1, 1886. I don't see any other. I think that's all. Yes; April 20, 1885, seven per cent.

Q. Was this 57 % of assessments in addition to the original 20 % called for?

411 A. Well, yes and no—that is to say, for the 20 % that was originally called and originally paid in. When the bonds were issued they received bonds and stock for it the same as they did for the remainder of the money and stock.

Q. In other words, there was the money that was received; there was the 90 % on the five hundred thousand dollars of the bonds, and then certain amount of money received on the 57 % assessments in addition to that. Was the 57 % assessment of which you have spoken all the assessments that were levied on the stock?

A. By action of the board of directors?

Q. By the company.

A. Yes, sir.

Q. There was never any call made for any part of the stock after January 1, 1886?

A. Nothing by the board of directors. Individually, I demanded of those who had not paid and they said they were unable to pay.

Q. The board of directors made no other call?

A. No; the board of directors made no call.

Q. The only resolution passed by the board of directors in reference to the stock subscription after the first of January, 1886, was the resolution in regard to your stock subscription, was it not?

A. Yes, sir.

Q. At the time that deed of further assurance was made did not the bondholders and stockholders consist practically of the same persons with the exceptions that were stated by Mr. Murray

412 of the banks that held those papers as collateral security?

A. Yes, sir; to a certain extent they did.

Q. Will you state who were bondholders who were not stockholders?

A. I stated on the other examination and went into details. Mrs. Pomeroy, 9 bonds; Alabama National Bank, 9 bonds; the State National Bank, 28 bonds; the Commercial Bank, 26 bonds, and J.

T. Fitzgerald, 20 bonds; my wife, who was a stockholder to the amount of fifty thousand dollars and holds 218 bonds.

Q. What did you say was the purpose of making the deed of further assurance?

A. To carry out the provisions of the original trust deed under which we bound ourselves to do on demand.

Q. Did you not say that after a conference with Gen. Pettus and upon discussion it was determined that that course was the best to protect the interests of the bondholders and creditors and stockholders?

A. No; I did not.

Q. In your cross-examination did you not, in answer to the question as to the intent and purpose with which the deed of further assurance was executed, refer to the fact that the property would be likely to be frittered away by attachments?

A. No; I did not. It was not in reference to that. It was in reference to the commencement of suit in this court. I stated that after a consultation with Gen. Morgan and Gen. Pettus and a discussion among ourselves it was thought we could best protect
413 the interests of the bondholders, stockholders, and the general creditors by commencing this action in the name of P. P. Plumb in the United States court in order to prevent the property from being frittered away by attachments and lawsuits.

Q. Gen. Morgan at that time represented Mr. Plumb, the trustee?

A. Yes, sir.

Q. Who did Gen. Pettus represent?

A. Nobody; I consulted him individually. He had been my attorney in several cases.

Q. Did he represent Mrs. Plumb at that time?

A. No, sir; he didn't represent anybody.

Q. You say you consulted him personally?

A. Yes, sir.

Q. Any one else in this consultation?

A. No, sir.

Q. The suit of P. B. Plumb, trustee, in this court was the result of that conference?

A. Well, I don't know that I would say that. Of course I was anxious to know what would be the best thing to be done under the circumstances, and talked with Gen. Pettus individually and Gen. Morgan, and after considering the matter he thought that it was best for the interests of all parties that that suit should be brought in the United States court. The object in bringing the suit was to protect all parties.

Q. How long was it after the company begun operations on the nail factory before the price of nails went down to a price where there was no profit in them?

414 A. I cannot remember exactly the date when we begun operations. It was about a year before we stopped that the price of nails got so low that there was no profit in making them.

Q. The nail factory was the principal business of the Brierfield Coal & Iron Company?

A. All of its business was subservient to the purpose of making nails. The success of the enterprise depended upon the profits in nails.

Q. Was any resolution ever passed by the board of directors or stockholders authorizing the conveyance to P. B. Plumb, as trustee, of the unpaid stock subscription?

A. I cannot answer that.

Q. Will the records of the company show all the resolutions that were passed?

A. I think they will. There was no resolution of that kind that is not embraced in the records.

Q. In this book (handing witness book marked on the back of binding "Record B. C. & I. Co.")? This is the book of the record of the proceedings of the board of directors and stockholders of the Brierfield Coal & Iron Company.

A. Yes, sir.

Adjournment to 3.30 p. m.

Reference resumed at 3.30 p. m.

Cross-examination by Col. THORINGTON:

Q. Mr. Peter, at the time the Plumb suit was commenced in this court did the company owe laborers and employees anything?

415 A. Yes, sir; about ten thousand dollars.

Q. Did it have any money with which to pay them?

A. No, sir.

Q. That is in addition to the debts stated as two hundred thousand dollars?

A. Yes, sir.

Q. Was there anything owing at that time as a balance on the purchase-money of any of the company's property?

A. Yes, sir; we owed the State of Alabama money which was then due, and Carter's money, which was due, and French Nabors' money, which was due, and B. B. Lewis' money, which was due; all of which was passed due.

Q. What was the original amount of the purchase-money of the Carter property?

A. Ninety thousand dollars.

Q. Were the principal works and improvements of the company on that property?

A. Not the principal works; the furnace was.

Q. About what was the balance then due at the time the Plumb suit commenced?

A. About thirteen thousand dollars and interest.

Q. Were the Carters at that time threatening to foreclose their mortgage for the payment of their balance?

A. Yes, sir.

Q. Did the company have any money with which to pay the balance?

A. No, sir.

Q. Was it not one of the purposes of that Plumb suit to prevent a sacrifice of the property under sale by the Carters by getting authority from the court and to raise money to pay off that debt
416 and the other debts you have just mentioned?

A. Well, yes, it was. In July I had made a contract with the hope of extending the time of the payment and dividing into smaller amounts the note of thirteen thousand dollars. Before that time they had made demands for the payment of that money and threatened to take possession of the property, but when we failed to raise this money on the first of August I saw that we were not going to have money to pay the debts specified above.

Q. What would have been the result if those hands had not been paid—the hands and employees?

Objection on the ground of illegality and irrelevancy.

A. There would have been trouble right away, and they might have done injury to the works.

Motion to exclude the answer.

Q. In whose possession, Major, is the property of the Brierfield Coal & Iron Company now?

A. That of the trustee, Mr. Chambers.

Q. He is in possession as trustee under appointment of this court?

A. Yes, sir.

Q. In the case of Chambers, trustee, against The Brierfield Coal & Iron Company?

A. Yes, sir.

For fear of loss of the original deeds, which are in the possession of W. L. Chambers, trustee, through his agent, T. J. Peter, it is agreed that the statement to be made by Major Peter of the
417 dates, names and grantors, consideration, and description of the property in each of the deeds in his possession may be received in evidence in lieu of the deeds themselves.

Examination closed.

T. J. PETER.

Col. C. C. HUCKABEE, being duly sworn, testified as follows:

Examination by Mr. LONDON:

Q. Were you one of the original subscribers to the Brierfield Coal & Iron Company, Colonel?

A. Yes, sir.

Q. You signed the subscription list that was shown in the book of proceedings here?

A. Yes, sir.

Q. How many bonds did you receive, Colonel?

A. Well, I think fifteen; that is the best of my recollection.

Q. What became of those bonds, Colonel Huckabee?

A. Well, I sold the larger part of them to Mr. Fitzgerald.

Q. Do you remember how many you sold to Mr. Fitzgerald?

A. I think thirteen.

Q. At the time you sold those bonds to Mr. Fitzgerald did you inform him of the circumstances under which you acquired them?

A. I did.

Q. Did you inform him as to the plans of the organization of the Brierfield Coal & Iron Company?

A. Yes, sir. I told him when he asked me how I acquired them that I subscribed fifteen thousand dollars to the capital stock of the company, and I was to get fifteen thousand dollars in bonds
418 and fifteen thousand in stock, and these were the bonds which I received, and I had a receipt for the stock, but hadn't any of the certificates.

Q. Was any certificates ever issued to you for that stock?

A. No, sir.

Q. Then you got the fifteen thousand dollars for the subscription you made?

A. Yes, sir; they gave me the fifteen thousand in bonds and I had subscribed fifteen thousand to the capital stock.

Q. You are the gentleman who sold the property to the company, are you not, Col. Huckabee?

A. Yes, sir.

Q. For what consideration?

A. Forty-five thousand dollars.

Q. How much money was paid to you?

A. They paid me twenty-five thousand dollars—that is, they paid me a little over twenty thousand dollars in cash and then they paid some dents I owed there, amounting in all to about twenty-five thousand dollars they paid me; that left twenty thousand dollars due me.

Q. Was there anything agreed to between you and them in regard to the twenty thousand dollars as to application to subscription or otherwise?

A. At that time?

Q. Yes; at that time.

A. No.

Q. Was there afterwards?

A. Yes, sir.

Q. What was the agreement?

A. They agreed that they owed me that amount of money, and agreed if I would take out the twenty thousand dollars for
419 Mr. McCalley they would give twenty thousand dollars in stock and twenty thousand in bonds.

Q. This was the balance due you on the purchase of the lands, was it not?

A. Yes, sir.

Q. The price of the land had been agreed upon, as you stated, at the sum of forty-five thousand dollars?

A. Yes, sir.

Q. Have they ever delivered the bonds to Mr. McCally?

A. No.

Q. Never get any bonds or stocks either?

A. No, sir.

Q. Are the contracts in reference to the lands and stock subscription in writing?

A. I know it was a verbal contract between Mr. Peter and myself, and that I was to have stock and bonds, and the condition of subscription as it is here *are* the same.

Q. The subscription in the book is on page 23; that one, you mean?

A. Yes, sir.

Q. The one which you looked at to-day?

A. Yes, sir.

Q. This subscription on page 23 is the contract which was made in writing subsequent to the verbal contract which you made with Mr. Peter—it is practically the same as embodied in writing here?

A. Yes, sir.

Defendants move to exclude the testimony of the witness on the verbal contract on the ground that the written contract itself is in evidence.

Q. You attended the meetings of the directors of the corporation, did you, Colonel?

A. Yes, sir.

Q. And voted at them?

A. Yes, sir.

420 Q. Were you present at any stockholders' meeting?

A. Yes, sir; I think I was.

Q. At the meeting held on the 25th of August, 1882, pursuant to a notice or call for a meeting to authorize the issue of bonds and execution of a mortgage and an adjourned meeting for the same purpose on September first, 1882, were you present?

A. (Examining the book of minutes.) It has been so long I don't know whether I was or not.

Q. I will refresh your memory. Do you recall the meeting at which the mortgage was authorized or not? Do you remember the time when the company voted to issue mortgage bonds?

A. I don't know positively.

Q. Let me read the minutes. (Reads.)

A. Yes, sir; I was there at that meeting. I recollect about the matter of the seal.

Q. The stockholders' meeting was held the same day?

A. Yes.

Q. You recollect about being present at the meeting first of September?

A. Yes, sir; my best recollection is that I was there.

Q. You were examined as a witness in the cause of W. L. Chambers, trustee, against The Brierfield Coal & Iron Co., on reference here, were you not?

A. Yes, sir.

Q. Mr. McCally and you both?

A. Yes, sir.

Q. You have read the testimony in that deposition?

A. Yes, sir.

421 Q. Your statements there are substantially what you would testify here if questioned the same?

A. Yes, sir.

(By Gov. T. H. WATTS:)

Q. You have carefully read over that testimony and would have only to repeat that if questioned?

A. Yes, sir.

It was agreed that the deposition of C. C. Huckabee taken in the cause of W. L. Chambers, trustee, *vs.* Brierfield Coal & Iron Co. *et al.*, with cross-examination and exhibits, if any thereto, may be used in evidence in this cause, subject to the objections stated in the deposition.

Mr. London offered in evidence the book, marked, with print on the back of cover, Record B. C. & I. Co.

Reference adjourned to meet at ten o'clock on Monday, March 25, 1889.

Copies from Record B. C. & I. Co.

Page- 25-'6.

Office of the Brierfield C. & I. Co.

BRIERFIELD, ALABAMA, *Sept.* 1*st*, 1882.

A meeting of the directors of the Brierfield Coal & Iron Company was held here to-day. There were present C. C. Huckabee, John G. Murray, and Thos. J. Peter.

Motion to adopt the seal of the company as presented carried.

Motion of C. C. Huckabee that the officers of the company be directed to execute the mortgage of even date read to the board

422 of directors and authorized by the stockholders at their meeting here to-day carried.

Motion to adjourn to meet at the call of the president carried.

T. J. PETER, *President.*

JOHN G. MURRAY, *Secretary.*

Page 26.

Office Brierfield Coal & Iron Co.

BRIERFIELD, ALABAMA, *July* 9, 1884.

A meeting of the directors of this company was held here to-day pursuant to the call of the president. There were present C. C. Huckabee, Thos. J. Peter, and John G. Murray.

The following motion was made, seconded, and unanimously carried:

"Resolved, That an assessment of twenty per cent. upon the stock of the company be levied, payable at the office of the company, at Brierfield, as follows: Ten per cent. payable August 1, 1884; five

per cent. payable October 1, 1884; two per cent. payable January 1, 1885, and three per cent. payable April 1, 1885."

The board then adjourned to meet at the call of the president.

T. J. PETER, *President.*
JOHN G. MURRAY, *Secretary.*

Page 27.

Office of the Brierfield Coal & Iron Co.

BRIERFIELD, ALABAMA, *April* 20, 1885.

A meeting of the directors of this company was held here
423 to-day pursuant to a call of the president. There were present C. C. Huckabee, Thos. J. Peter, and John G. Murray.

Nelson Robinson, of # 78 Wall street, New York, tendered his resignation as director of this company, which was accepted.

Edward J. Peter was then elected to fill the vacancy thus occasioned in the board of directors. An additional assessment of 7% was levied on the stock of the company, making total assessment of 27%, all of which is to be paid in cash or coupons on or before October 1st, 1885.

The following resolution was then offered and adopted:

"Resolved, That the president is authorized to make a contract with a railroad company to be organized to build a railroad from Brierfield by the Bibb Furnace by which the Brierfield Coal & Iron Company will sell for cash to the said proposed railroad company the right of way, grade, and material on hand between Brierfield and Bibb Furnace, and will lease, maintain, and operate so much of said proposed railroad as lies between Brierfield and the Big Cahaba river, and pay as rental for same semi-annually an amount equal to the semi-annual interest at the rate of seven per cent. per annum on the bonds to be issued by the said proposed railroad company on that portion of their railroad so leased, providing said bonds shall
not exceed more than enough at ninety per cent. of their
424 par value to pay for the actual cost of said railroad."

The board then adjourned to meet at the call of the president.

T. J. PETER, *President.*
JOHN G. MURRAY, *Secretary.*

Page 28.

Office Brierfield Coal & Iron Co.

BRIERFIELD, ALABAMA, *January 1st*, 1886.

A meeting of the directors of this company was held here to-day. There were present C. C. Huckabee, Thos. J. Peter, and John G. Murray. The following preamble and resolution was made, seconded, and unanimously agreed upon:

"Whereas the Brierfield Coal & Iron Company owes to various parties about one hundred and fifty thousand dollars; and whereas it is deemed expedient that during the year 1886, A. D., certain

moneys should be paid by assessment on the stockholders: Therefore resolved that an assessment of thirty per cent. (30%) upon the stock of said company be levied, payable during the year 1886, A. D., in cash, coupons, or bonds of the company at 95% of their par value."

The board then adjourned to meet at the call of the president.

T. J. PETER, *President.*
JOHN G. MURRAY, *Secretary.*

425 Pages 30, '1, '2, '3, '4, '5, '6.

Office Brierfield Coal & Iron Co.

BRIERFIELD, ALA., *July* 29, 1887.

The board of directors of the Brierfield Coal & Iron Company met at the office of the company pursuant to the following notice:

JULY 18, 1887.

E. T. Peter, sec'y Brierfield Coal & Iron Company:

You will please notify each director of the Brierfield Coal & Iron Company that there will be a meeting of the directors of the said company, held at its office, in Brierfield, at nine o'clock a. m., on Friday, the 29th inst.

(Signed) T. J. PETER, *President.*

The board met at nine o'clock a. m.

There were present T. J. Peter, John G. Murray, and E. T. Peter.

The board adjourned to meet at six o'clock p. m. on the same day and at the same place.

T. J. PETER, *President.*
E. T. PETER, *Secretary.*

Office Brierfield Coal & Iron Co.

BRIERFIELD, ALA., *July* 29, 1887.

The board of directors met at the office of the company at six o'clock p. m., pursuant to adjournment.

There were present T. J. Peter, John G. Murray, and E. T. Peter, and the following letter was received by the president from Director C. C. Huckabee:

"ANNISTON, *July* 29, 1887.

Mr. Peter.

DEAR SIR: I am too unwell to go to Brierfield to-day,
426 but if *if* Saturday or Monday will answer I will come, if I am able. Very sorry I cannot go to-day. Let me hear from you.

Respectfully, C. C. HUCKABEE."

On motion of John G. Murray, the resignation of A. A. Southwick as director of the Brierfield Coal & Iron Company was accepted and Chas. L. Bates was elected as director to fill said vacancy. Mr.

Chas. L. Bates then appeared and took his seat as director. E. T. Peter then offered the following resolution, which was adopted, and the president and secretary directed to act in accordance therewith:

Whereas, on the 23rd day of November, 1883, ten shares of the stock of the Brierfield Coal & Iron Company were without authority of the board of directors *of the board of directors* of the Brierfield Coal and Iron Company issued to John G. Murray, on which he has paid the sum of six hundred dollars, and desires to surrender to the said company four shares of said stock:

Resolved, That the Brierfield Coal & Iron Company accept the return of four of said shares of stock from said John G. Murray, and that the president and secretary be directed to issue to him a new certificate for six shares of said company's capital stock in lieu of the remaining six shares in certificates for ten shares, and that said six shares are fully paid up and constitute said Murray a stockholder of said corporation to that extent.

427 The following resolution was offered by John G. Murray and adopted, and the president and secretary authorized to act in accordance therewith:

Whereas Thomas J. Peter, on the 4th day of May, 1882, subscribed for twelve hundred shares of the capital stock of the Brierfield Coal & Iron Company of the par value of one hundred dollars each, upon which subscription he has paid in money the sum of eighty-three thousand six hundred and forty dollars and eighty-five cents ($83,640.85); and whereas said Thomas J. Peter has become the surety of said company for the loan from time to time to it of the sum of seventy-seven thousand eight hundred dollars ($77,800), which money has been used in the current business of said company, and has put his private property in pledges to secure such indebtedness to various persons and banks, all of which indebtedness appears on the books of said company as being unpaid:

Resolved, That the balance unpaid on such subscription of stock, namely, the sum of thirty-six thousand three hundred and fifty-nine and $\frac{15}{100}$ dollars ($36,359.15), shall not be called for or demanded of said Thomas J. Peter, but shall remain in his hands as indemnity to him against his said liabilities for said company so secured by him, and he shall be in nowise liable to pay the balance that is or may be owing to said company on the said stock subscrip-

428 tion, but the said stock shall be held and considered as being fully paid up, and the unpaid balance due thereon shall be fully cancelled and shall so remain credited on the books of the company until said company shall have fully released and discharged him from his said liabilities for said company and shall have relieved the property pledged by said Thomas J. Peter as security for the debts of said corporation, and the secretary of said company shall deliver to said Thomas J. Peter a certificate that his stock is fully paid up, and said Peter may, if he see proper, assign and transfer said certificates of stock on the books of said company as stock fully paid up.

The following resolution was offered by John G. Murray and

adopted and the president and secretary directed to act in accordance therewith:

Whereas there was issued to Thomas J. Peter, as trustee, on the 28th day of October, 1884, twenty-eight hundred and fifty-nine shares of the capital stock of the Brierfield Coal & Iron Company at the par value of one hundred dollars each; and whereas said Thomas J. Peter has paid to said company the sum of $83,640.85 on his subscription of $120,000, and Esther A. Peter has paid $50,000 on her subscription of $50,000; and whereas her stock for said payment was issued to Thomas J. Peter, trustee; and whereas said Thomas J. Peter offers to surrender eleven hundred and sixty shares of said capital stock, which was improperly and illegally
429 issued, and presents the same for surrender; There —:

Resolved, That the Brierfield Coal & Iron Company accept the surrender to said company of certificate number 36 for 2,859 shares of its capital stock, and hereby authorizes the issue of certificate number 44 for 500 shares of capital stock fully paid up to Esther A. Peter, and the issue of the certificates number 41 and number 42 for 1,197 shares of fully paid up-capital stock to Thomas J. Peter or his assigns.

On motion of E. T. Peter, the following resolution was adopted:

Resolved, That for the purpose of complying with section six of the deed of trust executed and delivered by the Brierfield Coal & Iron Company of Alabama on the first day of September, 1882, to Preston B. Plumb, trustee, and upon the written request of said trustee now presented, which request is as follows:

"To the Brierfield Coal and Iron Company, of Brierfield, Alabama:

Pursuant to the promises and obligations of a certain indenture of mortgage made and executed by you to the undersigned as trustee, bearing date September 1st, 1882, for the purpose of securing upon the property therein mentioned and described certain bonds, amounting to the total sum of five hundred thousand dollars, I hereby request you to execute, acknowledge, and deliver to me, as trustee as aforesaid, a further mortgage or other proper conveyance whereby you shall convey to me, as trustee as aforesaid and for the uses
430 and purposes of the trust in said first-mentioned instrument set out, all property, both real and personal, by you acquired since the date of said first-mentioned mortgage, and that you will also, in said mortgage or other conveyance, accurately and fully set out and describe, by numbers, *metes* and bounds, location, or otherwise, all lands which at the said last-mentioned date were owned by you and which are covered by or designed to be covered by said first-mentioned mortgage, and which property was made the basis of said mortgage and was actually pledged for the security of the bonds therein mentioned, and also all the personal property now owned by you which was so owned at the date of said mortgage, and also all the franchises held at said date or thereafter acquired; and also to execute and deliver all such further deeds, conveyances, and assurances in law for the better assuring to me, as such trustee upon the trust expressed in said mortgage, the property and premises therein conveyed or intended to be so conveyed, and all property and fran-

chises then held or thereafter acquired, and generally to do and perform such acts and things as shall make, subject to the assurance and payment of said bonds of five hundred thousand dollars, all the property, both real and personal, now owned by you.

Witness my hand this 25th day of July, 1887.

PRESTON B. PLUMB, *Trustee.*"

431 It is ordered that the president of said company, in the name of said company and under its corporate seal, cause to be executed and attested by him and by the secretary of said company the deed of conveyance and further assurance now here read and examined and approved by the board of directors of said Brierfield Coal & Iron Company of Alabama, which deed bears date on this day, and is ordered to be copied on the minutes of said board. It is further ordered that the president of said board of directors cause said deed to be duly acknowledged or proven and recorded in accordance with the laws of Alabama.

The board then adjourned to meet at the office of the company on Tuesday, August 2d, at nine o'clock a. m.

P. J. PETER, *President.*

E. T. PETER, *Secretary.*

OFFICE OF THE BRIERFIELD COAL AND IRON COMPANY,
BRIERFIELD, ALABAMA, *August* 2, 1887.

The board of directors met, pursuant to adjournment, at office of the company at nine o'clock a. m. There were present T. J. Peter, John G. Murray, Chas. L. Bates, E. T. Peter, and C. C. Huckabee.

The following resolution was offered by Chas. L. Bates and adopted:

Whereas Preston B. Plumb, trustee in a deed of trust executed by the Brierfield Coal & Iron Company on the first day of September, 1882, has demanded in writing the property of said company of every kind and character covered by said lien, which de-
432 mand is in the words and figures following, namely:

To the Brierfield Coal & Iron Company, of Brierfield, Alabama:

Pursuant to the promises and obligations of a certain mortgage executed to me as trustee by you, bearing date September 1, 1882, for the purpose of securing upon the property therein mentioned and described certain bonds, amounting to the sum of five hundred thousand dollars, and especially in pursuance of articles second and third, and because of the non-payment of the interest upon said bonds and because of the non-payment of the sums required as a sinking fund by the terms of said mortgage, said default in the payment of interest and in the payment of the sinking fund having both continued for a period of more than six months, I hereby demand possession of all the property covered by said mortgage for the uses and purposes of the trust created thereby and in accordance with its terms, conditions, and limitations.

Witness my hand this first day of August, 1887.

PRESTON B. PLUMB, *Trustee.*

And whereas said Preston B. Plumb, as trustee, has appointed John G. Murray as his agent to take charge of and control said property, which appointment is now hereby exhibited to the board of directors of the Brierfield Coal & Iron Company, and is in words and figures following, namely:

433 To John G. Murray, Esq., Brierfield, Alabama.

SIR: I hereby appoint and empower you as my agent in my name and stead as trustee of a mortgage upon the same to enter upon and take possession of all and singular the property of the Brierfield Coal & Iron Company, of Brierfield, Alabama, holding and operating the same according to my orders and instructions.

Witness my hand this first day of August, 1887.

(Signed) PRESTON B. PLUMB, *Trustee.*

And whereas the statements made in said demand are true and said Brierfield Coal & Iron Company is bound by its covenants in said trust deed to deliver the property included in said deed into the custody and possession of said trustee to be controlled and managed by him in accordance with said deed; and whereas the said Brierfield Coal & Iron Company, on the 29th day of July, 1887, in compliance with the stipulations and covenants in said deed above mentioned, made, executed, and delivered to said Preston B. Plumb, as trustee, a further assurance and conveyance of all the property of said company acquired since the first day of September, 1882, and more fully and completely describing the property included in said deed of trust: Now, therefore, it is

Resolved, That the board of directors of the Brierfield Coal
434 & Iron Company direct that all the property of said company in said deed of trust be, and the same is hereby, surrendered and delivered to the said Preston B. Plumb, trustee, under and in accordance with the provisions of said deeds, and that Thomas J. Peter, the president of said company, is hereby directed to place all of said property in the charge and custody of said Preston B. Plumb, trustee, and that with all convenient speed he will cause a full inventory thereof to be made out and said property receipted for by said Preston B. Plumb, trustee, or his agent, the said John G. Murray, and that said inventory be recorded in the books of said company.

Resolved, That in case the said Preston B. Plumb, trustee, should file a bill or complaint in any court of law or equity that the president of the company is hereby authorized to file a true answer thereto.

The above resolutions were unanimously carried.

The minutes of the meetings of July 29th were read and approved.

There being no further business before the board, it stood adjourned to meet at the call of the president.

T. J. PETER, *President.*

E. T. PETER, *Secretary.*

UNITED STATES OF AMERICA,
Middle District of Alabama.

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. *et als.*
vs.
BRIERFIELD COAL & IRON CO *et als.*

435 I, Benj. P. Seals, special examiner, appointed by the court to take the testimony in the above-entitled cause, hereby certify that the foregoing examination of John G. Murray and T. J. Peter, contained on pages 1 to —, inclusive, were taken by me in presence of counsel at the times therein stated and were by me reduced to writing and signed by the said witnesses, who before said examination were duly sworn to speak the truth, the whole truth, and nothing but the truth.

In witness whereof I have hereunto set my hand and seal this 2d day of July, 1889.

BENJ. P. SEALS, [SEAL.]
Special Examiner.

436 EXHIBIT A TO JOHN G. MURRAY'S TESTIMONY.

Schedule of Indebtedness of Brierfield Coal and Iron Company as Evidenced by the Bills Payable of the Company Aug. 2nd, 1889.

Page 1.

When due.			
1885.			
Aug. 15	State of Alabama } land	375 00	And interest.
" "	" " " }	1,975 00	" "
1888.			
Jan'y 4	French Nabors, Montevallo	662 00	" "
July 4	" " "	662 00	" "
1889.			
Jan'y 4	" " "	662 00	" "
1886.			
Feb'y 19	B. B. Lewis, Tuscaloosa	533 33	" "
1889.			
Oct. 7	Burnham, Parry, Wms. & Co., locomotive	1,092 52	Philadelphia.
Aug. 20	Hollins, Sons & Co.	1,002 13	Nashville.
Sept. "	" " "	1,002 13	"
Oct. "	" " "	1,002 13	"
Aug. 15	City National Bank } Bonds.	2,000 00	Selma.
Aug. 28	" " " }	5,000 00	"
Oct. 11	" " " }	3,500 00	"
1888.			
Jan'y 5	" " " }	3,500 00	"

Exhibit A, &c.—Continued.

When due.			
1889.			
Aug. 15	Commercial Bank Bonds.	5,000 00	Selma.
" 26	" " "	3,500 00	"
Sept. 15	" " "	2,500 00	"
Dec. 23	" " "	7,500 00	"
1888.			
Jan'y 31	" " "	4,000 00	"
1889.			
Aug. 4	Higdon and McCary	388 83	Birmingham.
Nov. 13	" " "	358 62	"
" 28	" " "	353 88	"
Aug. 25	Dismukes & Company	373 30	Nashville.
Sept. "	" "	373 30	"
437			
Sept. 3	Fite, Porter, Lyles & Co.	1,900 85	Nashville.
Oct. 3	" " "	1,913 00	"
Nov. "	" " "	1,925 14	"
" 28	" " "	359 40	"
Sept. 13	John G. Murray	2,500 00	Brierfield.
" 21	" " "	2,500 00	"
Aug. 18	C. E. James & Co.	319 30	Chattanooga.
Nov. 28	" " "	899 35	"
Dec'r 27	" " "	899 35	"
1888.			
Jan'y 28	" " "	899 35	"
Feb'y 23	" " "	196 05	"
	Carried forward	61,627 96	

2.

1887.	Bro't forward	61,627 96	
Aug. 1	Sloss Furnace Company	2,088 86	Birmingham.
" 20	" " "	2,740 25	"
Sept. 23	Sloss Iron and Steel Co.	1,000 53	"
Oct. 23	" "	1,006 93	"
Nov. 23	" "	1,013 33	"
Aug. 8	W. F. Vandiver & Co.	1,112 81	Montgomery.
Aug. 23	" "	1,207 87	"
Sept. 8	" "	1,207 88	"
" 18	" "	1,207 88	"
Nov. 8	" "	1,140 58	"
" 21	" "	1,143 75	"
Dec'r 8	" "	1,184 76	"
438			
Aug. 15	Gay, Hardie & Co.	939 91	Montgomery.
Sept. 15	" "	939 91	"
Oct. 15	" "	939 92	"
Dec. 28	" "	1,438 43	"
1888.			
Jan'y 23	" "	1,438 43	"
Feb'y 23	" "	1,438 43	"
1887.			
Aug. 31	L. and E. Lamar	566 91	Selma.
Sept. "	" "	566 91	"

Exhibit A, &c.—Continued.

When due.			
1887.			
Aug. 11	Hanover National Bank } Plumb.	5,000 00	New York.
Sept. 6	" " } Plumb.	7,500 00	"
" 13	" " } Plumb.	5,000 00	"
Oct. 10	" " } Plumb.	5,000 00	"
Nov'r 13	" " } Plumb.	5,000 00	"
Aug. 10	Nabers & Morrow	484 18	Birmingham.
Sept. "	" "	487 37	"
Oct. 8	Memphis Nat'l Bank } Nails.	1,600 00	Memphis.
" 14	" " } Nails.	1,600 00	"
" 21	" " } Nails.	1,600 00	"
Nov. 20	" " } Nails.	5,000 00	"
1888.			
Jan'y 5	" " } Nails.	800 00	"
1887.			
Dec'r 29	" " } Nails.	1,600 00	"
Oct. 4	Goetter, Weil & Company	790 45	Montgomery.
" 18	" " "	828 80	"
	Carried forward	128,243 04	
	3.		
	Bro't forward	128,243 04	
1887.			
Aug. 20	Penna. Steel Company	420 65	Steelton.
439			
Oct. 1	Penna. Steel Company	638 80	Steelton.
Dec'r 31	" "	648 10	"
Nov. 20	" "	426 97	"
1888.			
Feb'y 20	" "	433 18	"
1887.			
Sept. 16	Alabama National Bank } bonds	3,500 00	Birmingham.
Oct. 11	" " } bonds	4,500 00	"
Oct. 25	Flash, Preston & Company	731 96	New Orleans.
Nov. 15	" " "	735 41	"
1887.			
Aug. 18	H. Clay Evans	506 71	Chattanooga.
Oct. 18	" "	513 52	"
Dec. 18	" "	519 33	"
1888.			
Feb'y 18	" "	525 14	"
1887.			
Dec. 6	Hollins, Sons & Co.	1,172 43	Nashville.
1888.			
Jan'y 8	" "	1,172 43	"
1887.			
Dec. 20	H. C. & I. S. Armstrong	506 47	Louisville.
1888.			
Jan'y 26	" " "	699 92	"
1887.			
Sept. 26	Alf. Webb & Co.	237 73	Chattanooga.
Oct. "	" "	239 28	"
Nov. "	" "	240 83	"
Dec. 15	Friedman Bros.	736 48	Boston.
Nov. 14	H. W. Perry & Co.	631 07	Birmingham.
" 4	J. C. Hurter & Co.	429 45	Montgomery.

Exhibit A, &c.—Continued.

When due.				
1888.				
Jan'y 7	W. P. Frederick		423 00	Louisville.
1887.				
Oct. 23	W. D. & K. Carter, Jr.	Land.	1,028 88	Brierfield.
Nov. "	" "		1,553 33	"
Dec. "	" "		1,563 33	"
440				
1888.				
Jan'y 23	W. D. & K. Carter, Jr.		1,573 33	Brierfield.
Feb'y 23	" "		1,583 33	"
Mar. 23	" "		1,062 16	"
Apr. 23	" "		959 14	"
May 23	" "		2,151 10	"
1887.				
Aug. 14	Alf. Webb & Co.		304 00	Chattanooga.
	Total bills payable		$160,610 50	
1887.				
Sept. 18	J. F. Fitzgerald	Bonds.	6,000 00	Marion.
1888.				
Mar. 18	" "		6,000 00	
Sept. 18	" "		3,000 00	
	Total bills payable		$175,610 50	

Amount of Indebtedness of Brierfield Coal and Iron Company on Open Account August 2nd, 1887.

Page 1.

Fite, Porter, Lyles & Co., Nashville, Tenn.	3,612 15
Berry, Demoville & Co., " "	585 72
Wm. Roper, Buffalo, N. Y.	63 81
Kemker, Woolwine & Co., Nashville, Tenn.	290 69
D. R. Samuels, Knoxville, "	284 00
Hutchison & Co., Sweetwater, "	172 10
Parker Russell Mining & Mfc. Co., St. Louis	132 20
Dodson & Hils M'f'g Co., "	358 76
W. M. Butler & Co., Nashville	212 50
Dunlap Bros. & Co., Louisville	22 03
A. D. Block, Selma	137 45
Jas. Manegold & Co., Montgomery	368 75
Miller, Metcalf & Parkin, Pittsburgh, Pa.	80 68
441 Lechner M'f'g Co., Columbus, O.	9 60
Nashville Trunk M'f'g Co., Nashville Co.	108 91
Weimer Mch. W'ks Co., Lebanon, Pa.	436 42
Ogden Bros. & Co., Knoxville, Tenn.	252 95
Geo. W. Lord, Philadelphia, Pa.	33 20
Higdon & McCary, Birmingham, Ala.	116 80

	Gottschalk & Co., Chattanooga, Tenn.	399 12
	Edgefield & Nashville M'f'g Co., Nashville, Tenn.	108 30
	Walter W. Davin, Birmingham	55 50
	Chattanooga F'd'y & Pipe W'ks, Chattanooga	122 72
	W. W. Brame, Calera, Ala.	7 95
	Morton, Rud & Co., Baltimore, Md.	135 33
	Salisbury & Cline, Chicago, Ill.	98 56
	American Nail Machine Co., Ashtabula, O.	77 13
	Union Iron Works, Chattanooga	95 46
	Melner & Ketlig, Birmingham	880 51
	Austin Nichols, New York	308 05
	William P. Walters' Sons, Phila., Pa.	4 90
	Offutt & Co., New York	10 75
3,487 82	W. F. Vandiver & Co., Montgomery	3,372 32
115 50	C. E. James & Co., Chattanooga	196 23
3,372 32	Amount carried forward	13,223 55
	Amount brought forward	13,223 55

2.

	Loeb and Loeb, Montgomery	270 88
	Ramsey, Boker & Co., Baltimore	191 11
	R. A. Patterson & Co., Richmond, Va.	71 35
442	Cassety Oil Co., Nashville	904 39
	Naumburg, Kraus, Lauer & Co., New York	954 70
	Fred. Kuppersmith, Mobile, Ala.	14 39
	Hollins, Sons & Co., Nashville, Tenn.	671 90
	Geismor Bros. & Bissinger, Chattanooga	867 40
	J. Simon & Bro., Montgomery	258 40
	Gay, Hardie & Co., "	3,824 34
	Chattanooga Car & F'd'y Co., Chattanooga	77 85
	Flash, Preston & Co., N. O., La.	1,860 92
	W. E. Moore, Selma, Ala.	54 55
	Martin S. Calvin, Augusta, Ga.	31 46
	W. A. Russell, Atlanta, Ga.	212 60
	Payne, Pettibone & Son, Wyoming, Pa.	164 91
	Jas. G. Butler, St. Louis, Mo.	128 40
	Mississippi Mills, Wisson, Miss.	184 08
	Nashville Paper Co., Nashville	67 44
	Dismukes & Co., "	678 26
	Cawthon Colman, Selma	134 79
	Kaufman & Richards, Selma	67 90
	Obernoger F'd'y Sup. M'f'g Co., Cincinnati	60 90
	Enterprise Ice Co., Selma	26 75
	Nabers & Morrow, Birmingham	364 78
	Rosenburg & Co., Selma	140 77
	Goetter, Weil & Co., Montgomery	653 11
	Ætna Fire Brick Co., Oak Hill, Ohio	366 50
	E. T., V. & Ga. R. R'd Co., Selma	2,632 04
443	H. Metzer, Meridian, Miss.	167 35

Lenoir M'f'g Co., Lenoir, Penn.		550 00
Alex. Holzman, Montgomery		10 45
M. Watson, Selma		3 60
Volker Felthausen, Buffalo, N. Y.		274 40
Spencer & Brown, Greenville, Penn.		7 50
Amount carried forward		30,173 72

3.

	Amount brought forward	30,173 72
	E. E. Sanders & Co., Pensacola, Fla.	20 50
	L. and E. Lamar, Selma, Ala.	144 17
	Landen & Son, Dalton, Ga.	32 48
	Kerr & Co., East Newark	66 19
	Pallman & M. Fadden, Phila., Pa.	31 20
	Chas. A. Stern & Co., Montgomery	160 75
	Lane & Bodley Co., Cincinnati	60 30
	Ludlow Saylor Wire Co., St. Louis	4 88
	Junius Judson & Co., Rochester, N. Y.	2 25
	T. J. Coaledge & Bro., Atlanta, Ga.	34 00
	Capital City Coffee & Spice Mill, Atlanta, Ga.	44 19
	Gibson & Lee M'f'g Co., Chattanooga	26 25
	C. F. Kopitzch, Pottsville, Pa.	17 50
	Morris Mining Co., Birmingham	307 92
	Roswell & Stoll, Montgomery	15 00
	St. Louis Metal Co., St. Louis	47 54
	J. R. Butt & Co., Knoxville	59 17
	Atlanta Paper Co., Atlanta	35 92
444	La Clide Fire Brick Co., St. Louis	90 00
	Oberndorf & Ullman, Selma	39 00
	Burnham, Pang, Williams & Co.	88 70
	T. H. Payne & Co., Chattanooga	150 17
324 25		
50 40		
273 85	M. Schwartz, N. O., La.	273 85
	G. C. Gould, Chicago, Ill.	50 00
	Allen & Atkinson, Chattanooga	26 25
	Towers Hardware Co., Birmingham	33 91
214 65		
137 50		
77 15	N. W. Forshee, Maplesville, Ala.	77 15
135 00		
94 45		
40 55	John B. Randall, Montevallo	40 55

105 99			
31 58			
74 41	J. W. Hardy, Calera, Ala.		74 41
158 44			
104 75			
53 69	Calera F. & C. Co., "		53 69
	Cherokee Iron Co., Cedartown, Ga.		4,843 07
	Total amount open accounts		37,124 68
	Total amount bills payable		175,610 50
	" " open accounts		37,124 68
	Total indebtedness as near as can be obtained without checking up with books of creditors,		$212,735 18

445 HOLLINS, SONS & Co. *et al.* *vs.* BRIERFIELD COAL & IRON Co.

Reference held on June 3, 1889, before Fred. S. Ball, special commissioner.

Present: Thorington & Smith, for W. L. Chambers, trustee; Marks & Massie, for Brierfield C. & I. Co.; E. W. Pettus, for Com. Nat. Bank of Selma, for City Nat. Bank of Selma, for S. A. Peter and others; T. H. Watts, Jr., for —— ——; A. T. London, for complaints.

Examination of T. J. PETER, who, having been duly sworn in the cause previously, was examined by A. T. LONDON, and testified as follows:

Q. You received a copy of the order requiring the production of the books of the Brierfield Coal & Iron Co.?

A. Yes, sir.

Q. Have you produced all the books of that Company?

A. Well, I supposed that I had, but Mr. Murray came to Brierfield the other day and found some other books which he now has here. I looked over the bills-payable book and supposed that was a copy of the first book. He says it is not; that that book is not here, but all the bills in that are paid, and he says that the only unpaid bills are copied into this book. Otherwise, so far as I know, all the books are here.

446 Q. With that bills-payable book, then, would all the books of the Brierfield Coal & Iron Company be here?

A. All I know of.

Q. Do you know what books the Brierfield Company had?

A. Well, generally, but might have been some books might not

known about. The blotters, for instance, I knew nothing about. These were hunted up and sent in.

Q. Do the books you have produced contain the same entries that the blotters you have referred to?

A. That is my understanding.

By Gen. PETTUS:

Q. I understand you produced all the books you knew of. You intended to obey the order of the court fully.

A. Yes, sir.

Q. What is the book you speak of?

A. That is the bills-payable book. Here is one that we used about a year. We had another before this. When it was filled we transferred to this book all notes unpaid at that time, and from that time filled in the rest. I had supposed this was a complete copy from the beginning.

Q. That is the only book you know of not produced in court?

A. That is the only one I know of.

T. J. PETER.

Examination of S. ROMAN, who, being duly sworn, testified as follows:

By LONDON:

Q. What is your business?

A. I am engaged with Lehman, Darr & Co., of this city.

447 Q. Are you an accountant by profession?

A. I am an accountant, but not by profession—that is, not my exclusive business.

Q. Are you familiar with accounts?

A. I am.

Q. How long have you been dealing with accounts?

A. About twenty years.

Q. Have you ever examined the books of the Brierfield Coal & Iron Company, which were produced?

A. I have overlooked them.

Q. I wish you would state what you found in the books that were produced in reference to the ascertainment of the meaning of any particular item in the ledger.

Objection by Gen. Pettus, because the book itself is the best evidence of its own meaning; second, because the witness cannot give a meaning to a word and an entry which does not properly belong to it; third, because it is for the court to consider the meaning of words in the ledger and the other books of the company. This objection is made severally and separately on the part of all the parties represented by that counsel.

Thorington objected on the same ground on the part of the trustee.

Objection on the part of Peter and Murray on the same grounds and the further ground that the books of the Brierfield Coal & Iron Company are not evidence as against themselves.

Q. (Handing witness bills-receivable and bills-payable
448 book.) Please look at this book, on the page you have open before you (first written page in the book), an entry there, bills receivable, P. B. Plumb, stock, three notes or bills, twenty-five hundred dollars each. Please look at the bills payable in that book, on the same day, and see whether there are any bills payable to P. B. Plumb for that amount?

A. On different dates here; November 15 and 20, 1886.

Q. What amount are those bills payable for?

A. Twenty-five hundred dollars each.

Q. What amounts are the bills receivable for?

A. Twenty-five hundred dollars.

Q. To what account do those bills receivable appear to be charged by the bills-receivable book—to what account are they given?

A. The account of stock.

Q. Have you ever examined the ledger entries from those bills receivable and bills payable?

A. Not carefully; no, sir.

Q. Is there any cash book in which those entries appear that you have been able to find?

A. That book is missing. Mr. Murray promised to bring that book.

Q. From the books that are produced before you——

Gen. PETTUS: What is the purpose of this testimony?

A. LONDON: Simply to prove the plaintiffs' case.

Q. In what respect?

A. That the bonds were issued without value.

By LONDON:

Q. Are those entries on the debit or credit side?

449 A. They seem to have been discounted papers.

Q. Can you tell now from the cash book produced and the ledger where those entries in bills payable and receivable book went to?

A. Not without thoroughly examining the book; would have to check it over.

Q. Have you examined the ledger of the Brierfield Coal & Iron Company produced?

A. I have overlooked it; I have not examined it. I thought several books ought to be there that were not, and Mr. Murray called at my office and called my attention to the way they kept their books; that may be correct.

Q. You say they were not kept in the usual form of book-keeping?

A. Not in the form I have usually seen books kept.

Q. Wherein did they differ from what you have seen?

A. They differed in their accounts kept their own way; maybe they were straight.

Q. But in what respect did they differ?

A. Cash book was kept on one side; credits and debits. I have never seen that before.

Q. Would the books produced here to-day enable you to ascertain from the books heretofore produced the true state of the accounts of the Brierfield Coal & Iron Company—all of them?

A. I suppose I could. I cannot state until I look over them. I suppose I could make a balance from it.

450 Q. Would those books show the exact amount that had been paid by the stockholders, of each of them, on account of stock?

A. No, sir; not in a regular set of books.

Q. What do you mean by a regular set of books?

A. Well, several accounts were kept in other books that will throw light upon it. You would have to get the other books to find that out.

Q. Taking all the books together, is it ascertainable?

A. I think so.

Q. Would it show how much went to the profits of the company and to the credit of the stockholders?

A. I can't tell without an examination of them.

Q. From what examination you have made could you tell?

A. ——.

Objection by Gen. Pettus. I don't think even a cloud ought to be cast upon this book-keeping, and I object to his being examined on that subject until he says he knows what is in it. I object to the witness being examined in reference to these books or any part of the books that he has not himself examined. This is a mere botch-work. I object to it on that account; to examining a man on accounts that he has not himself examined.

Q. Have you ever examined any of those books?

A. I have overlooked them. The way they were kept was so foreign that I could not understand them.

451 Q. Did you examine these books before that interview with Mr. Murray?

A. Yes, sir.

Q. Upon that examination were you able to state anything about the condition of the Brierfield Coal & Iron Company?

A. No, sir.

Q. Since that time Mr. Murray has made explanations to you so now you may be able to make the entries plain?

A. Yes, sir.

Q. You examined such books as you had?

A. Yes, sir.

Q. Have you ever examined the stock-certificate book?

A. I did.

Q. With care?

A. Yes, sir.

Q. Did you look at the stubs of the stock-certificate book?

A. Yes, sir. (Witness looks at the book.)

Gen. Pettus objected on the part of all the parties he represents, severally and separately, to the examination of the witness on that

book, on the ground that the book itself is the best evidence of what it shows; second, that no book-keeper or book-keeping can throw any light on a stock stub book—that the book itself is the only thing that can be used for the purpose of evidence in this cause; then, severally and separately on the part of each of these parties, that that book is not evidence against them at all for any purpose.

452 Thorington objected on the part of trustee on the ground of illegality and irrelevancy.

Marks objected on the same ground for his clients.

By Gen. PETTUS:

Q. Do you know anything about the matters stated there not shown in this book?

A. Outside of the book?

Q. Yes.

A. No, sir.

By LONDON:

Q. Is certificate # 36 in the book?

A. Yes, sir.

Q. Is there any endorsement on it?

A. Yes, sir.

Q. Does that certificate show for what other certificate it was issued?

Pettus objects to the question on the ground that it is an attempt to prove by parol the contents of a writing, and it is illegal evidence and irrelevant evidence against the parties represented by him; that if it is evidence at all it is evidence in itself, and the witness cannot consider or explain it.

Marks makes the same objection on same grounds.

A. The stubs of the book shows it.

Counsel for Peter objects to the answer because it is not at all responsive to the question, and moves to exclude it on that ground.

Q. Do the stubs in the book you have before you show where a surrender was made, and what other certificate was issued in lieu of it?

Pettus objects to the question on the ground that the stub

453 itself is the best evidence of what is showed, and not the witness, and that the question calls for parol evidence from the witness of the contents of a writing, which writing is before him, and which has not been offered in evidence because it is a mere attempt to manufacture testimony by the use of a witness when the testimony itself is inadmissable.

A. Yes, sir.

The complainants now offer in evidence certificate # 36, for 2,859 shares, in words and figures as follows:

No. 36. 2,859 shares.

The Brierfield Coal & Iron Company of Alabama.

Capital, $750,000. Shares, $100 each.

This is to certify that T. J. Peter, trustee, is the owner of twenty-eight hundred and fifty-nine full-paid shares of one hundred dollars each in the capital stock of the Brierfield Coal & Iron Company of Ala., transferable only on the books of the corporation in person or by attorney, in accordance with the by-laws of said corporation, and on the surrender of this certificate.

In witness whereof the seal of the corporation and the signatures of the president and secretary are hereunto affixed.

Brierfield, Ala., Oct. 28th, 1884.

T. J. PETER, *President.*

JOHN G. MURRAY, *Secretary.*

(Seal of company attached.)

Across the face of this certificate is written, "Cancelled Jan'y
454 1st, 1887," and on the back of it is endorsed: "For value received I, the undersigned, hereby assign and transfer unto Charles L. Bates one share, to Edward T. Peter one share, and to Edward T. Peter, trustee for Esther A. Peter, 697 shares, and to Esther A. Peter five hundred shares, and to Laura E. Williams, five hundred shares, and to the Brierfield Coal and Iron Company 1,160 shares *shares* of the capital stock of the Brierfield Coal & Iron Company, and I do hereby constitute and appoint John G. Murray true and lawful attorney, irrevocable, for and in my name and behalf to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof I have hereunto set my hand and seal this 12th day of January, 1887.

T. J. PETER, *Trustee.*

Sealed and delivered in presence of—
JOHN G. MURRAY."

Marks objects to this certificate on behalf of Peter, Brierfield Coal & Iron Co., and Murray, first, because it is illegal and irrelevant evidence; second, because the certificate itself shows that the complainants have offered only a portion of it; third, that the certificate contains more than that part set out by complainants.

Pettus objected, on behalf of Commercial National Bank of Selma, City National Bank of Selma, James T. Fitzgerald, and S.
455 A. Peter, *objected* to the certificate and the endorsement thereon offered in evidence, severally and separately, on the ground, first, that the paper offered in evidence has not been proved to be genuine; second, because the stock has never been shown to have been issued which is represented by that certificate.

The Commercial National Bank of Selma, and the City National Bank of Selma, and James T. Fitzgerald object severally and separately to the introduction of that certificate of stock on the ground

that it is not evidence as against them for any purpose; second, as to them it is *res in alia acto*. Mrs. S. A. Peter objects to the introduction of the certificate of stock because it is not shown that she in any way ever authorized any such stock to be transferred, nor accepted any transfer thereof; second, it is not shown that she had any knowledge of the matters evidenced by said certificate or the endorsement thereon, or that she was in any way bound by it.

Examination of Major T. J. PETER by LONDON:

Q. Is this certificate book the certificate book of the Brierfield Coal & Iron Company produced by you by order of the court?
A. Yes, sir.
Q. They were genuine, were they?
A. Yes, sir.
Q. Issued by the company?
A. Yes, sir.
Q. Those in the book are those which were surrendered
456 by the parties for reissue?
A. Yes, sir.

Trustee objects to the question and answer on the ground that it is illegal and irrelevant.

Complainants offer in evidence the whole of the certificate book, from which certificates have been torn out or issued up to #43, produced by T. J. Peter under order of the court as the certificate book of the Brierfield Coal & Iron Company.

The City National Bank of Selma, and the Commercial National Bank of Selma, and James T. Fitzgerald object to that book being offered in evidence, severally and separately, because it is not a transaction in which they were concerned; second, it is the book of a corporation which is not evidence as against them; it is as to them illegal and irrelevant. As to Mrs. Peter, he objects to it because it is offered as a whole when parts of it are illegal and irrelevant evidence, and she objects to that part of this evidence which has been offered against her which is in certificate #36 because it is not shown that she ever consented to anything shown in that certificate, nor had any knowledge of it.

Peter and Murray object because it is offered as a whole when parts of it have no reference to them and it is *res in alia acto*.

Examination of ROMAN by THORINGTON:

Q. Where you employed to examine these books?
457 A. I was asked to do so.
Q. Was there any agreement of employment in regard to it?
A. No, sir.
Q. What were you asked to do?
A. I was asked to look over them and see if I could strike a balance.
Q. Were you given any further instructions?

A. May have been some things said, to find out whether any of the stock had been paid for or something or that kind.

Q. What was stated to you?

A. To my best recollection Mr. London asked me if I would look over the books of the Brierfield Coal & Iron Company and see whether I could make a full balance of the books, to see where the profits went to, or whether I could find out whether the stock and bonds had been paid for by the different parties and who paid for them and the amount paid for them. That is about all that was said.

Q. Will you state just what examination you have made under those instructions?

A. As I stated before, I just overlooked them and did not examine them carefully, for the reason that I thought there were other books which were not there, and therefore I never made a th-rough examination of them at all.

Q. I understood you to say that those books were kept by a different system. Is it not a common thing for book-keepers to differ?

A. Yes, sir.

Q. Do you know who had kept those books?

A. No, sir.

458 Q. Did you ever have any conference with Murray about the books?

A. I had one conference with him.

Q. Was he able to make any explanation to you?

A. He explained some things to me that I didn't think before were right. He threw some light on things that were not clear to me.

Q. Did he call attention to the books you needed?

A. Yes, sir.

Q. Those have been furnished?

A. The cash books brought in this morning are a part of them.

Q. Are you able to say that they have not been correctly and honestly kept?

A. No, sir.

By PETTUS:

Q. Have you thoroughly examined any of these accounts book at all?

A. No, sir.

Q. Have you examined any particular entry on any particular subject through the entire books?

A. I have tried to examine them, but have never finished it.

Q. Because you did not have all the books?

A. Yes, sir.

Q. You tried and have not because you did not have all the books, and you have not examined any particular item or entry through the books entirely—any particular class of entries?

A. No; I have not.

Q. You have read all the stock-certificate books?

A. Yes, sir, and checked it over.

Q. You have read all that the stock-certificate book shows, and it is the only book you have thoroughly looked over?

A. Yes, sir.

459 Q. That book is necessarily connected with the other books, is it not?

A. It ought to be, from what I understand from Murray.

Q. I asked you if that book is not necessarily connected with other books.

A. It ought to be.

Q. Is it?

A. Not here with the regular books?

Q. I don't understand.

A. No entries of the stock books in any of the books produced here.

Q. Have you examined them all?

A. Yes, sir.

Q. Thought you said there were some you had not examined?

A. They would have no reference to it.

Q. You say, then, there are no entries in any of the books relating to the stock-certificate book?

A. No, sir; not to my knowledge.

Q. How about these notes?

A. As I answered in the direct examination, they have no direct connection at all——

Q. Money received for the stock has no direct connection?

A. *A.* For the books of the company do not show to whom the stock was issued or the stock account does not show to whom the stock was issued. The stock account of the ledger does not give the names and amounts or anything else of the stock delivered to any party.

Q. Does any book throw any light on that book at all?

A. On the different certificates contained in that book?

Q. Do they not throw any light at all?

A. No, sir.

By THORINGTON:

460 Q. Did you ever keep a set of corporation books?

A. Yes, sir. I didn't exactly keep them myself, but they were under my supervision.

Q. What books?

A. The Alabama warehouse.

Q. That the only set?

A. Yes, sir. I have never kept them, but I had them kept under my supervision.

Q. You have never kept a set of books yourself?

A. No, sir.

Q. How long ago did you supervise these Alabama warehouse books?

A. I think some time between 1878 and 1883; something like that.

Q. How long were they under your supervision?

A. From the time it started to the time it stopped as a corporation.

By LONDON:

Q. Have you ever had occasion to examine corporation books? Do you know the manner in which they are ordinarily kept?

A. I have never had occasion to examine any.

Q. Ever look at the Tallassee books?

A. Never examined them.

Examination closed.

Examination of JOHN G. MURRAY by LONDON:

Q. Look at this book. What book is it?

A. The journal of the Brierfield Coal & Iron Company.

Q. Whose handwriting are those entries in?

A. My own handwriting.

Q. I wish you would read on page 105 the last in there, to stock dated June 30, 1884.

461 A. Stock to first-mortgage bonds, debtor, 494,000 dollars; T. J. Peter, 280,000; E. S. Plumb, 99,000; Samuel Thomas, 83,000; Justin S. Morrill, 11,000; C. C. Huckabee, 15,000; R. L. McCally, 5,000; John G. Murray, 1,000. Money paid for bonds having been credited to stock and should have been credited to bonds as no consideration has been received by the Brierfield Coal & Iron Company for the stock issued.

Q. That entry was true at the time it was made?

A. Yes, sir.

Q. Are the amounts you have stated as having been paid in by shareholders the sum paid in subsequent to that date?

A. Yes. Made in my previous testimony? Yes.

Q. Not including the 494,000?

A. No, sir.

Q. Where do you get the account in the books stating that amount?

A. From the ledger.

Q. Turn to the account of T. J. Peter and show what the 280,000 dollars to his credit was composed of.

A. Moneys he had paid in at different times from April 15, 1882, up to the date of this entry.

Q. Is that account balanced in any way on June 30, 1884, by the entries you have read?

A. No, sir.

Q. What amount does that account show to the credit of T. J. Peter on the 30th day of June, 1884?

A. $34,111.92.

Q. Credit?

A. Yes, sir.

Q. Does that account show all the money ever paid in or credited to T. J. Peter's account?

A. Yes, sir; and E. A. Peter's to that time.

462 Q. Up to that date?
A. Yes, sir.
Q. Up to 1887, I mean.
A. Up to June 30, 1884.
Q. Does the account go on beyond that?
A. Yes, sir.
Q. How far up does that account go?
A. January 31, 1887, it shows here.
Q. Does that 34 thousand dollars appear in the books of the company elsewhere?
A. Yes, sir.
Q. How are they shown elsewhere?
A. In the receipts of the company from its organization to this time.
Q. Does not the account you read from page 246 enter into the books proper of the Brierfield Coal & Iron Company?
A. It does not only come in the June balance, but every item of this account is passed through the books of the Brierfield Coal & Iron Company.
Q. If any items in that account had been credited to another account in the books of the company, would it not be giving two credits to the same entry?
A. No, sir; not if credited by cross-entry.
Q. How do you do that?
A. By giving Mrs. Esther A. Peter credit for $34,111.92 at this time, June 30, by account of T. J. Peter.
Q. In that account is there any charge at all against T. J. Peter for capital stock?
A. No, sir.
Q. Have you got any account there against Mrs. Esther A. Peter?
A. Yes, sir.
Q. Was that included in that account?
A. Up to June 30, 1884.
463 Q. Then where does it appear?
A. Then in the form of a note issued to Mrs. E. A. Peter for $34,111.92, which note is number 138 in the bills-payable book here on evidence.
Q. Suppose that fifty thousand dollars of stock were charged to that account, how would it stand then?
A. What fifty thousand?
Q. That she subscribed for.
A. Then T. J. Peter would have credit for that much less—for the difference between $50,000 and $34,111.92.
Q. Would he be charged with it?
A. Yes, sir.
Q. If he subscribed for one hundred and twenty thousand dollars of stock how would it stand then?
A. Just the same as now, less that difference.
Q. In debt or due anything?
A. Neither one.
Q. What would have happened then?

A. From the time it started to the time it stopped as a corporation.

By LONDON:

Q. Have you ever had occasion to examine corporation books? Do you know the manner in which they are ordinarily kept?

A. I have never had occasion to examine any.

Q. Ever look at the Tallassee books?

A. Never examined them.

Examination closed.

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A. The journal of the Brierfield Coal & Iron Company.

Q. Whose handwriting are those entries in?

A. My own handwriting.

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Q. Are the amounts you have stated as having been paid in by shareholders the sum paid in subsequent to that date?

A. Yes. Made in my previous testimony? Yes.

Q. Not including the 494,000?

A. No, sir.

Q. Where do you get the account in the books stating that amount?

A. From the ledger.

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A. Moneys he had paid in at different times from April 15, 1882, up to the date of this entry.

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A. No, sir.

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A. $34,111.92.

Q. Credit?

A. Yes, sir.

Q. Does that account show all the money ever paid in or credited to T. J. Peter's account?

A. Yes, sir; and E. A. Peter's to that time.

462 Q. Up to that date?
A. Yes, sir.
Q. Up to 1887, I mean.
A. Up to June 30, 1884.
Q. Does the account go on beyond that?
A. Yes, sir.
Q. How far up does that account go?
A. January 31, 1887, it shows here.
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A. Yes, sir.
Q. How are they shown elsewhere?
A. In the receipts of the company from its organization to this time.
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A. No, sir; not if credited by cross-entry.
Q. How do you do that?
A. By giving Mrs. Esther A. Peter credit for $34,111.92 at this time, June 30, by account of T. J. Peter.
Q. In that account is there any charge at all against T. J. Peter for capital stock?
A. No, sir.
Q. Have you got any account there against Mrs. Esther A. Peter?
A. Yes, sir.
Q. Was that included in that account?
A. Up to June 30, 1884.
463 Q. Then where does it appear?
A. Then in the form of a note issued to Mrs. E. A. Peter for $34,111.92, which note is number 138 in the bills-payable book here on evidence.
Q. Suppose that fifty thousand dollars of stock were charged to that account, how would it stand then?
A. What fifty thousand?
Q. That she subscribed for.
A. Then T. J. Peter would have credit for that much less—for the difference between $50,000 and $34,111.92.
Q. Would he be charged with it?
A. Yes, sir.
Q. If he subscribed for one hundred and twenty thousand dollars of stock how would it stand then?
A. Just the same as now, less that difference.
Q. In debt or due anything?
A. Neither one.
Q. What would have happened then?

A. I would not have delivered the 280 bonds.
Q. Is there any account of stock in this account?
A. No, sir; but of bonds.
Q. Where is the stock account?
A. Below here.
Q. What is on the stock account?
A. Stock account of T. J. Peter shows a credit of $83,640.85.
Q. Is there any account of Mrs. Peter's stock?
A. Yes, sir.
Q. Where is that?
A. Page 253 of this general ledger.
Q. What is this entry?
A. January 31, by payment to subscription to capital stock, fifty thousand dollars.

Q. How was that paid?

464 A. By the surrender of this note at that time and by the payment at previous times of moneys.

Q. Does that appear on the books?
A. Yes, sir.
Q. Where?
A. All through the books wherever made. It appears in the name of T. J. Peter; so with all the payments up to this time made both by him and her; so, also, all payments made by Seeny, Thomas, and Brice appear in the name of Thomas up to this time.
Q. There were 1,160 shares of stock surrendered and cancelled for T. J. Peter January, 1887.
A. Never made any entry on books of stock surrendered.
Q. Any account anywhere showing it, except here?
A. No, sir.
Q. Then, under that system in which the Brierfield Coal & Iron Company books were kept a surrender might be made, and to the corporation, of 1,160 shares, and the accounts of the company would not show anything of it?
A. No; it could not. Our stock-certificate book is a part of the books of the company. It shows every certificate issued and surrender made.
Q. Did you keep in your books any stock account showing the amount received from stock by the several stockholders?
A. Yes.
Q. Can you turn to that place?
A. Yes, sir. There is the account of T. J. Peter of stock on page 247, paid on stock, beginning at the 12th line from the bottom with July 31, 1884; page 248, stock account of Mrs. C. S. Plumb, beginning 16th line from the bottom of the page, beginning with

465 the entry of July 31, 1884; stock account of Samuel Thomas appears on page 249 of the general ledger, beginning with the entry of July 31, 1884; stock account of Justin S. Morrill appears on page 249 of the general ledger, beginning with the entry of September 8, 1884; stock account of C. C. Huckabee appears on page 250 of the general ledger, begin-ing with the entry of February 28, 1886; stock account of R. L. McCally appears on page 250; the

stock account of J. G. Murray appears on page 251 of the general ledger, beginning with the entry dated September 30, 1884. I notice that I transfer-ed Thomas' account—further stock account of Samuel Thomas on page 251 of the general ledger—a continuation of the other. Stock account of Geo. I. Seeney, page 252; stock account Calvin S. Brice, page 252; stock account E. A. Peter, page 253. That is all of them.

Q. Did these accounts you have just referred to go into the general balance of the company's accounts?

A. Yes, sir; into the account known as stock in the general ledger.

Q. Please turn to the stock account in the general ledger. What amount is charged to the stock account in the general ledger?

A. $542,115.17 is charged to the account of stock and bonds.

Q. Isn't there 494,000 of that that is first-mortgage bonds?

A. Yes, sir.

Q. Then how much of the stock entries in all—how much is charged to stock independent of bonds?

466 A. Independent of the bonds and the bills payable to E. A. Peter there is nothing charged to stock.

Q. Nothing charged to stock?

A. No, sir.

Q. What is this, then?

A. There is an entry of charge of $240.83, which was simply to correct a clerical error, but the stock-certificate book, which is one of the books of the company, stands as a charge and a fixed charge against the stock account in the general ledger.

Q. What is the first entry in that general ledger?

A. On that account? *A.* June 30, 1882.

Q. After the stock had been issued to the several stockholders was it charged to the stock account?

A. It stood as a fixed charge on the stock-certificate book.

Q. Then the stock account did not go into the trial balances?

A. Yes, sir; it did.

Q. How would you ascertain how much it was?

A. By taking the stock-certificate book and the general ledger. Every credit here is charged up to the individuals.

Q. Did not you charge in stock and bonds account the amount of each holder?

A. No, sir.

Q. Would that be a proper entry?

A. I don't know. We did not.

Q. Then if the capital stock were diminished by one hundred and sixteen thousand dollars the ledger would show nothing of it?

A. Oh, yes; we have accounts of the individual stockholders.

467 Q. Show me the entry where this one hundred and sixteen thousand dollars was disposed of. What became of it? Can you take the account of stock and bonds and tell how much was due the company on stock subscription?

A. No, sir; but I can by supplementing that with the stock-subscription book.

Q. Then 1,160 shares of the capital stock of the corporation has never had any entry made in the ledger or journal? Did you not charge in the ledger the amount each one would be liable for?

A. No, sir. The subscription book shows that.

Q. Did you rely on that?

A. Yes, sir.

Q. In making the trial balance monthly, did the subscription list enter into that?

A. No, sir; that was not included in the trial balance. We could not pass anything through our books which we never received. It could not appear in any trial balance of the company.

Q. Unpaid stock subscriptions did not appear as assessed on the ledger?

A. No, sir.

Q. Then only by reference to the stock-subscription book could you tell how much of the company's stock was outstanding?

A. Yes, sir.

Q. Can you tell by reference to the stock-subscription book how much — outstanding prior to the surrender of this # 36 certificate for 2,859 shares?

A. Yes, sir.

468 Q. Look at the book. I will give you the items. The certificates pasted back in the book have been surrendered for transfer?

A. Yes, sir.

# 7. Justin S. Morrill,	50	shares.	# 8. C. S. Plumb,	150	shares.
# 9. A. O. Beebe,	100	"	# 11. A. O. Beebe,	100	"
# 12. C. S. Plumb,	150	"	# 14. A. O. Beebe,	150	"
# 15. Justin S. Morrill,	49	"	# 22. Mrs. C. S. Plumb,	300	"
# 23. A. O. Beebe,	150	"	# 24. C. S. Plumb,	288	"
# 26. Calvin S. Brice,	30	"	# 27. A. O. Beebe,	70	"
# 28. Justin S. Morrill,	11	"	# 229. C. S. Plumb,	32	"
# 33. C. S. Plumb,	60		# 34. C. S. Plumb,	10	"
# 35. T. J. Peter,	1	"	# 37. A. O. Beebe,	230	"
# 38. C. L. Bates,	1	"	# 39. — Peter,	1	"
# 40. E. T. Peter trust,	697	"	# 41. E. A. Peter,	500	"
# 46. Laura Williams, —,					

up to that time. After the surrender of that certificate, # 36, for 2,859 shares of the capital stock of the company and the issue of the stock in lieu thereof, of all of the stock set out there on the certificate book, the outstanding capital stock of the Brierfield Coal & Iron Company was reduced by 1,160 shares?

A. Yes, sir.

Q. The stock certificates were issued prior to that entry of June 30, 1884?

A. Some of them were. The dates show. The stock-certificate book shows the date of the issue of the stock.

Q. But the credits were only made to those accounts.

469 This $494,000, that entry covers a debit entry of stock subscription?

A. We had an account of stock and bonds. We entered under that head everything paid in up to that time.

Q. Had been entered to stock?

A. Stock and bonds.

Q. Isn't that the stock account?

A. It is bond account.

Q. Is it brought over?

A. I don't know.

Q. Whose handwriting is that at the head of the book there?

A. I could not say; it is Castleman's or E. T. Peter's or some one else in the office. I think it is Castleman's.

Q. There has been an erasure there?

A. Yes, sir.

Q. On the credit side?

A. Yes, sir.

Q. Has not the heading been changed?

A. Looks as if there has been erasure made there.

Q. Was it made before or after you had charge of the books?

A. It was not made by me.

Q. Were they made by you?

A. No, sir.

Q. You kept the books up to the time the company ceased to do business?

A. I had supervision of them; I didn't do all the work.

Q. Turn to the T. J. Peter, president, account in this book.

A. That is just the same as a cash account.

Q. All the entries that went to cash went into this account?

A. Yes, sir. It was just the same as if it were cash instead of T. J. Peter, president.

Q. The entries were really made to cash, T. J. Peter, president, standing for a fictitious account?

470 A. Yes, sir; he was made debit to all cash received and credited for all cash paid out.

Q. Entries to his individual account as president, then, simply means that so much cash went one way or another?

A. Yes, sir.

Q. Did the entries from the journal go into this book?

A. Yes.

Q. This is the final entry book?

A. Yes, sir.

Q. Look at the account of T. J. Peter. Is there an erasure made there on page 247?

A. Yes, sir.

Q. Can you tell when it was made?

A. No, sir.

Q. Was it made while you had charge of the books?

A. I cannot tell about that. I could not pick out the particular erasures in the books.

Q. Is there any means by which you could tell whether the balance (the balance of T. J. Peter on page 247 is meant), as it now

stands, is the balance you had when you ceased to have charge of the accounts?

A. I know of no way except by reference to the stock account; the stock account total at the end of each month should be the same as the total of these amounts. That is the total of the individual stockholders' accounts.

Q. These accounts are simply personal accounts you kept with the stockholders?

A. Yes, sir.

Q. And did not enter into the general balance?

A. No, sir, except in the stock account.

471 Q. Do you know to whom these 2,859 shares were issued?

A. Yes, sir. I think they were issued to T. J. Peter, trustee.

Q. By whom was it received?

A. T. J. Peter, trustee.

Q. Do you know whether that stock was ever represented in any meeting of the company after it was issued?

A. Well, I hardly know; as a general thing it was understood how much stock was represented and there was no question made as to whether a particular certificate were represented. Yes, sir; I should say this was represented if we had a meeting between October, 1884, and January 12, 1887. That certificate represented a majority of all the outstanding stock. No, sir; I find there never was a meeting of the stockholders in that time, only directors' meetings.

Q. To whom were the stocks certificate- issued delivered in lieu of that one surrendered? Stock certificate # 42, for 500 shares, to Laura E. Williams, T. J. Peter, trustee; # 38, C. L. Bates; # 39, Edward T. Peter; # 40, Edward T. Peter, trustee for Esther A. Peter; # 41, T. J. Peter, trustee for Esther A. Peter.

Recess till 3 p. m.

Examination by THORINGTON on part of Chambers, trustee:

Q. Did you have charge of the books of the Brierfield Coal & Iron Company?

A. Yes, sir.

Q. Were they kept by you and under your supervision?

A. Yes, sir.

Q. Can you say whether or not those books were kept correctly?

A. Yes, sir; I think they were.

472 Q. Could you have taken those books at any time and from those books have made up an account with each one of the stockholders?

A. Yes, sir.

Q. Did you ever take them and make up a statement of accounts?

A. Yes, sir; I frequently did that. I did it for the court here.

Q. Are the accounts which you stated and are filed in the case of Chambers, trustee, against The Brierfield Coal & Iron Company made out by you from the books of the company?

A. Yes, sir.

Q. Were they correctly made?

A. I think they were.

Q. Do you know of any erasures or alterations made in those books except such as ordinarily occur in general book-keeping?

A. No, sir; I do not.

Q. Do you know of any books of the company that would shed any light on its business that have not been produced here?

A. No, sir. The books showing substantially the accounts of the company are all here. There is another one which was mentioned by Mr. Peter this morning which I think is not of much consequence.

London moved to exclude the latter part of this answer.

Q. Could a book-keeper of ordinary skill and competency in that business take *take* these books and state an account with the stockholders?

A. I think he could with a little explanation and instructions. I never saw a set of books which I could take up without some explanation or instruction from the party keeping the books.

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Q. Is it not a fact that most book-keepers have a mode of book-keeping which is peculiar to themselves?

A. Yes, sir; that is my experience.

Q. Did you ever have any conference with Mr. Roman about these books?

A. Yes, sir; one very short conference.

Q. Did you have any difficulty in explaining the matters troubling him?

London objects to the question on the ground of illegality and irrelevancy.

A. No, sir; he expressed himself as being enlightened.

London moves to exclude the answer.

Q. These books, then, do they or not contain a substantially full and correct and true statement of the business condition of this company?

London objects on the ground that the books speak for themselves.

A. Yes, sir; they do.

By MARKS:

Q. You speak of a balance due to Peter of eighty-three thousand odd dollars. Please give the date of that.

A. He has a balance credit on account of money paid on his stock subscription, January 31, 1887, of that amount—$83,640.85.

By Gen. PETTUS, for Mrs. E. A. Peter:

Q. How much stock was subscribed for in the name of Esther A. Peter?

474

A. Fifty thousand dollars.

London objects on the ground that the subscription list shows.

Q. How much money did she pay to the company on account of that stock?

A. Fifty thousand dollars.

Q. About when was that paid?

A. She paid the money along from time to time. I don't know exactly when the last of it was paid.

Q. If you know that the last was paid before a certain time state that.

A. In January, 1887, was the last payment.

Q. Who was the treasurer of the company and received the money at the time of these payments?

A. I was during the greater portion of the time. During the first I received it as secretary. Afterwards I received it as treasurer from the president. The treasurer at that time was not there.

Q. Then you, either as secretary or treasurer, received all of this money?

A. Yes, sir.

Q. Mrs. Peter's money I am talking about.

A. Yes, sir.

Q. You know as a fact that she paid for her stock in full in money?

A. Yes, sir.

Q. How much did Mrs. Peter pay for the bonds she obtained?

A. She paid ninety per cent. of their par value.

Q. On all the bonds she obtained from the company?

A. Yes, sir.

Q. You gave a list of these bonds at one time?

A. Yes, sir.

Q. Mrs. Peter paid ninety per cent. of the par value of the bonds you describe as belonging to her to the company?

A. Yes, sir.

475 Q. There was some of those bonds that were payable to a trustee for the benefit of her children that you speak of?

A. Yes, sir.

Q. Either four or five?

A. Five each.

Q. To each child?

A. Yes, sir.

Q. What did Mrs. Peter pay for them?

A. She paid ninety per cent. of their par value.

Q. To the company?

A. Yes, sir.

Q. At the time you were acting for the company, either as secretary or treasurer?

A. Yes, sir.

Q. What part, if any, did Mrs. Peter have in the management of the business of the company?

A. Not any.

Q. Was she present at any of their meetings?

A. No, sir.
Q. Either stockholders' meeting or directors' meeting?
A. Neither.
Q. Did she ever examine the books of the company?
A. No, sir.
Q. Where did she live at that time?
A. Principally at St. Louis.
Q. Where otherwise?
A. Part of the time in Wisconsin.
Q. Either in Missouri or in Wisconsin *in* all the time that the company was transacting this business?
A. Yes, sir; she has visited Brierfield once or twice.
Q. Were you personally acquainted with Mrs. Peter before this Brierfield Coal & Iron Company was formed?
A. I met her before coming here—yes, sir.
Q. Did you know anything personally of her means before—whether she had large means?
A. Yes, sir; I knew she had.
476 Q. You knew she had a large amount of means before this company was started?
A. Yes, sir.
Q. Of her own?
A. Yes, sir.
Q. How much was the entire amount of stock subscribed for?
A. By all parties?
Q. Yes, sir.
A. $375,000.
Q. Do the accounts you stated in the other case—stockholders' accounts—embrace the whole amount subscribed?
A. Yes, sir.

London objected on the ground that the statement in the other case was the best evidence.

Q. Are the stock accounts as stated by you against the individual stockholders in the other case correctly stated?
A. Yes, sir.
Q. And shows the balance due from each stockholder?
A. Yes, sir.
Q. If there is any balance.

London objects, and moves to exclude the preceding answer on the ground that it is conclusion of witness.

Q. What money, if any, was ever paid to Mrs. Peter?
A. I don't know of any ever being paid her?
Q. Did the company ever pay her any?
A. Not to my knowledge.
Q. Of this money paid on her stock a part of it and how much was purchase-money notes given for the property—the Carter notes?
A. I am not certain whether there were two notes for thirty-five hundred dollars each or——

Q. I want to know whether she purchased these notes from Carter and paid them into the company on stock.

A. Yes, sir.

Q. She bought the land notes from the Carters and paid
477 them in as money. That is part of the way in which she paid for her stock?

A. Yes.

On part of Commercial National Bank, City National Bank of Selma, and James T. Fitzgerald.

Q. I will ask you whether the bonds that the Commercial Bank of Selma held, the bonds which you testified to they did hold, whether those were hypothecated with the bank at the time the money was paid to the company.

A. Yes, sir; they were.

Q. As security for the money paid?

A. Yes, sir.

Q. In reference to the bonds held by the City National Bank can you state whether the bonds were hypothecated with the bank as security for the money you testified was due to them at the time the money was obtained?

A. Yes, sir.

Q. Was that money used in the business of the company?

A. Yes, sir.

Q. That obtained from each one of these banks?

A. Yes, sir.

Q. And to the amount testified to by you in the other case?

A. Yes, sir.

Q. How were the first-mortgage bonds sold? How were the bonds paid for? What was the amount paid for each?

A. Ninety per cent. of their par value.

Q. In money or how?

A. In money; yes, sir.

Q. The bonds that were issued to Col. C. C. Huckabee, how were they paid for, and to what extent?

Q. They were paid for in property. They were given to
478 him as purchase-money for property.

Q. The company owed him purchase-money?

A. Yes, sir.

Q. How much?

A. At the time he received his bonds, twenty thousand dollars.

Q. The company owed him twenty thousand dollars advanced for the purchase-money of the Brierfield Coal & Iron Company?

A. Yes.

Q. The company bought these lands and owed him twenty thousand dollars. In the settlement of that debt what did they do about the bonds? How many bonds did they give him?

A. A. Thirteen, as part payment.

Q. First-mortgage bonds?

A. Yes, sir.

Q. Held now by James T. Fitzgerald?

A. Yes, sir.
Q. The Huckabee bonds?
A. Yes, sir.
Q. Huckabee paid for them how much?
A. Ninety per cent. of their par value.
Q. Just like everybody else, but he paid it in that way?
A. Yes.

By LONDON:

Q. As you were asked how much Mrs. Peter paid for her bonds, where is the account on the books that shows what she paid?
A. Her account and T. J. Peter'- account are one on the book.
Q. The account of T. J. Peter on the ledger, 246–'7, includes all of the payments made by T. J. Peter and E. A. Peter, too?
A. Yes, sir; for bonds.
Q. It includes all that was paid by Mrs. Peter for stock?
479 A. To the end of the account; yes, sir.
Q. Mrs. Peter's stock account is on page 253?
A. Yes, sir.
Q. How much of that account did she pay?
A. All of it.
Q. When the balance was struck here on June 30, 1884, and the note was given for $34,111.42, to whom was that note given?
A. To Mrs. Peter.
Q. Although at that time she was a subscriber to the stock for fifty thousand dollars which had not then been paid. Explain that fully. At that time was she not a subscriber to fifty thousand dollars of stock which had not been paid?
A. No, sir; she was not a subscriber to capital stock which had not been paid; but she had not only paid that amount, but a great deal more than that.
Q. Where is the credit in the books?
A. On that account.
Q. You don't take into consideration that note for thirty-four thousand odd dollars, added to two hundred and eighty thousand dollars of bonds, covers both what was paid in by Mr. and Mrs. Peter. How do you make out that Mrs. Peter had paid for all of her stock when that note was given for the amount paid, if in all it only equalled two hundred and eighty thousand dollars in bonds and the thirty-four-thousand-dollar note?
A. Because Mrs. Peter had the money in there for which she received that note and had paid the Carter notes which she
480 held. When this arrangement was made for the transfer of the account and stock and bonds showing what had been paid for bonds it was done so an assessment might be made on the stock. There was some dispute among the stockholders as to whether they ought to pay. In order that Mrs. Peter might be made as secure and placed on as safe a basis as the other stockholders this note for thirty-four thousand one hundred eleven and ninety-two $\frac{}{100}$ dollars was given to her in addition to the Carter notes which she held already, which she had paid and had been given as purchase-money

for the property. In January, of 1887, this matter of stock assessment was settled. Mr. Peter at that time went on to New York and obtained from Samuel Thomas a payment of $11,700 upon his stock subscription and received notes from George I. Seeney for $14,400 upon his stock subscription. As soon as this was done Mrs. Peter at once surrendered to the company the note for $34,111.92 as well as the other notes that she held for the same purpose and received her credit in full upon her stock subscription.

Q. How much did the Carter notes amount to?

A. Fifteen thousand dollars, I think. I think two notes thirty-five hundred and one seven thousand five hundred.

Q. Did the company pay Mrs. Peter interest on the thirty-four thousand dollars up to the 31st of December, 1885?

A. They paid her interest, but not in cash; just in the
481 same way they paid interest on the Carter notes and on the bonds; gave them credit on the account of the company. Mrs. Peter did not receive that; Mr. Peter got it. A great many other payments made by her went to his credit.

Q. You stated that three hundred seventy-five thousand dollars' worth of stock was subscribed for. Will you please tell me how it is that on the issue of this certificate for 2,859 shares to Mr. Peter, as trustee, the outstanding stock then amounted to 5,123 shares?

A. Yes, sir. According to the original terms of the subscription, as I have testified, when a subscriber to the capital stock paid nine hundred dollars he received a bond of the Brierfield Coal & Iron Company for one thousand dollars and ten shares of the capital stock of the Brierfield Coal & Iron Company. When the three hundred and seventy-five thousand dollars had been paid in, less the ten per cent. discount which was allowed on the bonds, they having been sold at ninety per cent. of their par value, it was found by the company that they needed more money. They had in their treasury the remaining one hundred and twenty-five bonds. These bonds were bought by Mr. and Mrs. Peter, and upon the delivery to them of these bonds there were delivered to them in exactly the same way as they had been delivered to other persons buying bonds ten shares of the capital stock for each nine hundred dollars paid
482 in; so this stock was issued without ever having been subscribed for or without any authority from the board of directors of the company. I bought one of the bonds myself; paid nine hundred dollars and received with it ten shares of the stock in the Brierfield Coal & Iron Company. Though never having been a subscriber to the capital stock, I received it on the same basis as it had been given to those subscribing to it.

Q. Each one of these individual accounts *are* on this book shows in the credits, beginning with T. J. Peter, an item of discount, $23,100, in January, 1884, and discount, $4,900, June 30, 1884. Those are the discounts on the 280 thousand dollars of bonds?

A. Yes, sir; they were charged with the par value of the bonds and credited back with the discount.

Q. In making up the account of the amount that had been paid

in discounted is entered in the account to the extent of ten per cent. of the bonds?

A. Yes, sir.

Q. After the bonds had been issued, as you stated, this surplus stock was then simply reserved, was it? These 5,123 shares of stock were issued and bonds to the extent of five hundred thousand dollars?

A. I say that whenever a man purchased bonds, even though he had not subscribed to the stock, we gave him the stock the same as to original subscribers.

Q. They kept them, didn't they?

A. Yes, sir.

483 Q. And this was done in pursuance of the original — or at least this was the subscription arrangement?

A. It was done on the same basis.

Q. They stood on the stock book in their name?

A. Yes, sir.

Q. This extra issue was never authorized. It was without any authority from the board of directors. The stock subscription did not authorize the issue of stock for bonds.

Correction not accepted on sp. ex.

A. I mean to say that no special meeting authorized the issue of the stock outside of the original subscription.

Q. It was issued, though?

A. Yes, sir.

Q. This thirty-four-thousand-dollar note and the Carter notes were what paid up her fifty-thousand-dollar subscription?

A. Yes, sir; that is to say, they paid it finally.

Q. Did she buy any more bonds?

A. Yes, sir; I received money from Mr. Peter for bonds for Mrs. Peter.

Q. Then a stock certificate issued to Mrs. Peter?

A. I don't know.

Q. These certificates were issued at the time the bonds were bought?

A. On the original subscription.

Q. As to this 2,859 shares in certificate # 36. That was the aggregation of all the stock outstanding in which Mrs. Peter was interested?

A. Yes, sir.

Q. That included Mr. Peter's stock?

A. Yes, sir.

Q. Single certificate showed all—putting all into one certificate?

A. Yes, sir.

Q. Afterwards, when that certificate was surrendered, bonds

484 having been issued, it was issued for 1,160 shares less than that outstanding?

A. Yes, sir.

Q. In regard to—you were asked about payments to Mrs. Peter by the company. You do not mean to say that the coupons on Mrs.

Peter'- bonds were not used by Major Peter to pay his stock subscription, as he has testified in this case? He has testified that he used those coupons in paying his stock subscription.

A. I mean to say that no cash was paid.

Q. You didn't pay her any money on the coupons?

A. No, sir.

Q. All of the stock to which Mrs. Peter was entitled had been issued, as stated in this certificate, to her and to some other persons for her, as stated on this certificate?

A. Yes, sir.

Q. Here are three notes, twenty-five hundred dollars, P. B. Plumb, and about the same time other notes of the company. Here is a note on the 15th of November, 1886.

A. He gave notes on his stock subscription, which were used, and then he loaned money on very much the same principle as Mr. Peter. Mr. Peter went to him and could not get money from him on stock subscription. Finally he borrowed money from him and gave him company's notes. That was never repaid him, except by credit on stock subscription of Mrs. Plumb.

Q. This is, then, an error in bills payable?

Correction not accepted by sp. ex.

485 A. That is simply a note given to Plumb for a loan from him. These were bills receivable now entered under bills payable. I explained that to Mr. Roman. These three Plumb notes were received from Senator Plumb as payment on the stock subscription of Mrs. Plumb. They were discounted by us in bank and entered on our bills-payable book because of our endorsement, which made us responsible for them unless paid by Plumb.

Q. In these different accounts, in addition to the discounts, I find credit on interest to subscription. What do those mean?

A. That was from the time the payments were made up to the time of the issue of the bonds, the bonds beginning to bear interest in October, 1882, and the payments were made in May, 1882. That was *was* simply the interest that had matured up to the first of October, when the bonds began to draw interest.

Q. You credited each stockholder with interest on the payments he had made up to the time of the issue of the bonds, in October, 1882; the bonds were then issued in 1882. Then why was it necessary, if the bonds were issued in 1882, that *in* June 30, 1884, you should make this entry here declaring that the money had been paid on stock subscription?

A. I stated that it had been erroneously credited. The stock and bonds were in one account. We then seperated them, beginning when we made assessment on stock.

Q. Up to that time these credits had been put to stock?

A. Stock and bonds together.

486 Q. Does this stock and bonds account show the total that was paid by every one, including all these credits of discount and of interest? This is a statement of the whole amount received

by the Brierfield Coal & Iron Company on account of stock and bonds, including discount and other items?

A. Yes, sir.

Q. Was there anything credited to stock and bonds that was realized from the business?

A. No, sir.

Q. Did the company ever make any profits?

A. Never declared a dividend.

Q. Did it ever make a profit?

A. Never kept a profit account.

Q. You- stock account, on page 2, is credited with a large number of payments by T. J. Peter, president. Does your journal entry on the cash book show whether those items came from payments on bonds and stock subscription or from the business?

—. ——.

Q. Item Dec. 31, page 39, in other ledger, $21,900.00, what was that made up of?

A. Bills receivable, P. B. Plumb, $7,500; G. I. Seeny, $14,400.00, being bills receivable 395, '6 '7 and 423, '4, '5.

Q. This entry, then, should have been bills receivable?

A. Yes, sir.

Q. Same date, P. B. Plumb, $10,090, how was that paid?

A. In cash money. T. J. Peter, president, is debtor to stock that amount.

Q. On page 64, item for $42,900, what was that?

487 A. Samuel Thomas paid in that amount.

Q. How was that made up?

A. $11,700 was paid by T. J. Peter.

Q. How was it paid?

A. It was paid by charging up to his account money which he had in the hands of the company.

Q. He had advanced money on those?

A. Yes, sir.

Q. This amount was the amount paid?

A. $11,700 was paid by him. I think that amount. Thirteen bonds at ninety per cent. He bought them and paid the money to the company. Thomas paid the balance; he paid $11,700 through Mr. Peter and the balance he paid himself.

Q. It was cash?

A. The difference between 11,700 and 12,900 was interest coupons.

Q. Your books did not show how much was interest coupons?

A. Yes, sir; in the blotter.

Q. The journal does not?

A. No, sir.

Q. Cash book does not?

A. Yes, sir; it does.

Q. Does T. J. Peter's account in the ledger show—does that show the amount of cash?

A. Yes, sir.

Q. What date is that?

A. Here it is; January 2, 1887.

Q. That, then, including T. J. Peter president's account was not, then, strictly speaking, a cash account?

A. We considered it as equivalent to cash.

Q. Coupons were treated as cash, were they?

A. Yes, sir.

Q. Whether the items were coupons or cash could only be told from the blotter?

A. Yes, sir.

488 Q. It is impossible, then, without the blotter to tell how much was money and how much coupons or otherwise?

A. Yes, sir.

Q. In other words, the company treated the coupons as that much cash upon their maturity?

A. Yes, sir.

Q. They went into the cash account or T. J. Peter, president, account as so much money?

A. Yes.

Q. So that, in these books of the company proper, apart from the blotters, it would be impossible to tell of what the various items are composed?

A. No, sir; at all times you can tell by the blotters.

Q. They were so entered in the accounts of the company that you could not tell which from which?

A. A voucher was made of the coupons and the party in whose favor the coupons were made received credit. The voucher was charged as cash in the cash book.

Q. In other words, the coupons were treated as paid, as so much money?

A. Just exactly.

Q. Will you be good enough to turn to page 66, to the item of 56,420.85, and tell me what that is composed of?

A. It was charge- against the account of T. J. Peter in the uncollected accounts ledger of money the company had of his and E. A. Peter's money advanced by them.

Q. The $56,420 you say was cash advanced by Mr. and Mrs. Peter?

A. Yes, sir.

Q. Was any of that coupons?

A. It may have been.

Q. You cannot tell?

A. No, sir.

489 Q. By looking at the blotter, can you?

A. No, sir. Because it might have been accumulating for a year, or maybe two years. It would be necessary to examine all the blotters.

Q. On that date, January 31, 1887, I find Mr. Peter's account credited with $6,420.85?

A. That credit was given to stock account by uncollected accounts ledger.

Q. How much does that foot up there?

A. For Mrs. & Mr. Peter, $56,420.85.
Q. Have you $56,420.85 there?
A. Yes, sir. This indicates how it shall be divided. Credit to T. J. and E. A. Peter, $56,420.85.
Q. How much did Mrs. Peter get credit for?
A. Fifty thousand dollars.
Q. T. J. Peter how much?
A. The balance to make the $56,420.85.
Q. That was when this entry was made?
A. Yes, sir.
Q. In regard to those uncollected accounts ledger, explain that?
A. Our uncollected accounts ledger contained all our accounts against parties for sales made them or credits that parties had for money advanced to us, and any account with a party in that uncollected account ledger would show the amount of money to debit or credit of that party.
Q. Did that include the amount advanced by Mr. and Mrs. Peter to the company?
A. It included some of it; not all.
Q. How did you distinguish if you credited uncollected accounts or charged them and T. J. Peter as president when you came to make entries to individuals, part to their credit and part not?
A. I knew a great deal more money than that belonged to
490 Mrs. Peter, and she was to receive credit on her stock.
Q. Fifty thousand dollars was credited to her and the remainder to Mr. Peter, although it might have been all her money. She had gotten bonds and stock in the ratio provided for?
A. She had gotten bonds for more than that ratio.
Q. From the company?
A. Yes, sir.
Q. At what rate?
A. Ninety per cent.
Q. And didn't she get stock?
A. Yes, sir; to the amount of her subscription.

By THORINGTON:

Q. At the time that resolution was adopted authorizing the issue of ten shares of stock, with one bond for ninety per cent. of the par value of the bond, the directors and stockholders all supposed that to be a valid agreement?

Objection by London on the ground that what they supposed is not evidence and that it is hearsay.

A. That is not in the form of a resolution. It is the face of the stock subscription. All thought it was all right and subscribed for it. Their signatures are there.

London moves to exclude the answer of the witness.

Q. When was it found that it was an invalid subscription?
A. I never knew anything about it, so far as I am concerned, until July, 1887.

Q. When did they begin assessing the stock?

A. Can tell by looking at the record. I think July, 1884.

491 Q. That was when they first began to assess?

A. Yes, sir.

Q. In July, 1884, it was treated by the directors and stockholders as unpaid stock?

A. Yes, sir.

Q. Assessments were made on it from time to time?

A. Yes, sir.

Q. Were any of the debts included in this bill in existence at that time, July, 1884?

A. Not any, unless some of the debts created as purchase-money for real estate.

Q. I mean included in this bill?

A. No, sir.

Q. None of them at that time?

A. No, sir.

Q. At the time the debts mentioned in this bill in this case was the company carrying on a store?

A. Yes, sir.

Q. Did they deal with the general public from that store?

A. Yes.

Q. Was the consideration for these several debts goods and merchandise bought for that store?

London objects on the ground that it is irrelevant and illegal.

A. Yes, sir.

Q. That is the fact, is it?

A. Yes, sir.

Q. Did the company owe any debts at the time the deed of trust was executed and the bonds were issued?

London objects on the ground of illegality and irrelevancy.

A. No, sir.

Q. Did they at the time that deed was made have in con-

492 templation the creation of these particular debts sued on in this bill?

A. No, sir.

London objects to the question on the ground of irrelevancy and illegality, and that it is only conclusions and opinion.

A. No, sir.

Q. Were you connected with the company at the time that deed of trust was executed?

A. Yes, sir.

Q. In what manner?

A. I was secretary of it.

Q. Did you sign the deed as secretary?

A. Yes, sir.

Q. Do you know of any fraudulent intent on the part of anybody in the execution of that deed of trust?

London objects on the ground of irrelevancy and illegality.

A. No, sir.

Q. So far as you know, that deed was executed in good faith and for the purpose for which it purports on its face to have been executed?

London objects on the ground of irrelevancy and illegality.

A. Yes, sir.

Q. Do you know of any fraud or collusion on the part of anybody in filing the bill of Plumb, trustee, in this case?

London objects on the ground of irrelevancy and illegality.

A. No, sir.

Q. Was that bill, so far as you know, filed in good faith and for the purpose indicated on the face of the bill?

London objects on the ground of irrelevancy and illegality.

493 A. Yes, sir.

Q. Do you know of any reason why the debts included in this bill have not been paid, other than for the want of money?

A. No, sir.

By London:

Q. You were asked when you learned this was an invalid subscription?

A. I learned it in July, 1887.

Q. What time?

A. The latter part.

Q. From whom did you learn it?

A. I don't believe I could state that, it came from so many.

Q. Do you know whether any other stock or bond holders knew of it?

A. No, sir.

Q. When did you have a talk with Mr. Peter about it?

A. After we came back home after the filing of the bill.

Q. Never mention it to him before that?

A. No, sir; don't know that I ever did talk with him about it until that day.

Q. Did Mr. Plumb come over to Brierfield?

A. I never saw him there but once.

Q. You were asked in regard to this bill filed by Plumb, as trustee. Did you know anything about that bill being filed before it was filed?

A. No, sir; not before it was prepared.

Q. Did you know about it while it was in course of preparation?

A. Yes, sir.

494 Q. Did you furnish the counsel with the necessary information in preparing that bill?

A. All that I could.

Q. You desired the bill to be filed?

A. Yes, sir.

Q. Had you heard anything of the invalidity of the subscription at that time?

A. No, sir.

Q. When was that bill filed?

A. First of August, I think.

Q. You said that you heard of the invalidity of the subscription in July, 1887?

A. Yes, sir (but during the latter days of July, and several days of that period are all associated in my mind as one).

Q. Well, that was previous?

A. Yes, sir.

Q. At the time this bill was filed you had heard that the subscription was invalid; that whereby you were to give bonds and stock both?

A. I knew this, that the ten shares of stock issued to me were illegally issued. So far as the illegality of the stock in general was concerned, I was not paying any attention to that.

Q. You had surrendered four of those ten and still had a certificate for six?

A. When?

Q. July 29. You were the discoverer of this invalidity?

A. Yes, sir.

Q. Your purchase was simply of the bonds of the company?

A. Yes.

Q. You still have certificate for six?

A. Yes, sir; I paid for it in addition to the bonds.

Q. The four shares you surrendered to the company was the excess over what you had paid?

A. Yes, sir.

495 By THORINGTON:

Q. Are the amounts credited to the stockholders in addition to the amounts they paid for their bonds?

A. Yes, sir.

(London moved to exclude that answer and objected to the question on the ground of irrelevancy and illegality.)

A. The stock is not charged in the account where the credit is given. The stock-certificate book is a part of the accounts. That is a charge against them for that stock.

Q. You kept stock account on the debit side by that stock-certificate book?

A. Yes, sir; there never was any other debit account of stock, because the stock having received credit, the accounts to which the money went were charged and the balance kept in the books.

Q. The stock-certificate book is a part of the account of the stockholder?

A. It shows every certificate of stock issued.

Q. Does the stock-certificate book show the amount due by the several stockholders?

A. No, sir; I don't think it does.

Q. Where is the place in the books that does?

A. It is the difference between the two; difference between the credits and the subscription.

Q. Does it show the amount of the debit?

A. It shows the stock issued to them.

Q. Does it show the amount they owed for stock?

A. I don't think it does.

496 Q. You have stated a number of times that the stock-certificate book is a part of the books of the company in ascertaining the accounts of the stockholders?

A. Yes, sir.

Q. Does that stock-certificate book show the amount that would be due by the stockholders, less the credits on the ledger?

A. Yes, sir; I think it does.

Q. When I speak of debits I don't mean the balance; I mean the original charge. So, in ascertaining the amount due by the stockholders you took the stock-certificate book and deducted the credits to the stock account and the balance the stockholders owed? If the stock book shows a hundred shares of stock issued to a stockholder he is subject to a charge on his account here, in addition to the bonds here, of ten thousand dollars?

A. Yes, sir.

JOHN G. MURRAY

London offers in evidence the general ledger, the two journals, the stock-certificate book already offered in evidence, and the cash books, consisting of two blotters and two small cash books and one large book.

These books are offered in evidence, except as to James T. Fitzgerald, the City National Bank, and the Commercial National Bank of Selma, and shall not be used as evidence against them.

Recess until ten o'clock June 4, 1889.

Reference continued on June 4, 1889, at ten o'clock.

497 All the parties present except Watts & Son.

Examination of T. J. PETER by Gen. PETTUS, on behalf of James T. Fitzgerald:

Q. What did Col. C. C. Huckabee pay for the bonds that he obtained—the bonds that Mr. Fitzgerald afterwards had and now holds?

A. Those bonds were given to Mr. Huckabee for moneys due him by the company in consequence of his sale of real estate.

Q. The company owed him for the lands upon which the town of Brierfield stands?

A. Yes, sir; they owed him a balance.

Q. That was twenty thousand dollars?

A. Yes, sir; forty-five thousand was the contract, and we paid him twenty-five thousand dollars in cash and owed him twenty thousand still.

Q. Out of that twenty thousand dollars they issued to him these bonds in payment of that money?

A. In payment of a portion of it.

Q. Well, to that extent?

A. Yes, sir.

Q. What became of the balance then owing Mr. Huckabee? You owed him a balance still?

A. He had assigned five thousand dollars to R. L. McCally; the other we had paid for him in taxes, fees, and other things on his order.

Q. And there was still a balance?

A. That was paid on his stock subscription.

498 Q. That was on account of stock subscription?

A. He paid it at the same time. We gave him credit for the interest on these bonds for the coupons that had matured.

Q. That went to stock subscription?

A. Yes, sir.

Q. This debt paid for the bonds and also paid for a part of his stock subscription?

A. Yes, sir.

Q. At the same time?

A. Yes, sir.

Q. That was at the time shown in your former testimony in this case?

A. Yes, sir.

Q. A long time after the bonds were issued to other people?

A. Yes, sir.

Q. In that way, then, these thirteen bonds were issued to Mr. Huckabee?

A. Yes, sir.

On behalf of Mrs. E. A. Peter:

Q. (Examining ledger.) Please explain fully the item charged on your account on the books of the Brierfield Coal & Iron Company as of June 20, 1884, amounting to $34,111.92.

A. In the spring of 1884 the company needed money and I went East and was there several months. During that time I sent various amounts of money to Mr. Murray, and upon my return I notified him that this amount of $34,111.92 was money that I had borrowed from Mrs. Peter, for which the company was to give their note; whereupon we gave the note of that date. He calculated the average time of all the payments and we gave the note for that

499 time to Mrs. Peter. He had given me credit as I sent the money and he made a cross-entry charging me and giving Mrs. Peter the note.

Q. That was money that had been placed to your credit, but belonged really to Mrs. Peter?

A. During May I sent $18,227.45 at one time. During June I sent ten thousand dollars. During July I sent $14,854.20; during August, $15,724.61. Of these amounts I had borrowed of Mrs. Peter for the company the sum of $34,111.92. That $111.92 was interest

owed from a certain time. I have forgotten now that time. A certain interest was computed. The time we found to be June 20, 1884, and gave note that date for amount.

Q. That money borrowed by you was simply sent to the company, and all of it was credited to you, when in fact this first amount of the note talked about was money which you had borrowed of Mrs. Peter for the company. At that time had Mrs. Peter paid up her stock?

A. No, sir.

Q. How was it, then, that the money did not go to pay up her stock at that time?

A. Nobody had paid anything for stock at that time. We did not expect to pay anything at that time on the stock. The theory was to give stock as a bonus.

Q. Then you took this money as a loan?

A. Yes, sir.

Q. How was Mrs. Peter's subscription afterwards paid?

500 A. I made a subscription for her of fifty thousand dollars. She didn't authorize me at first, but she afterwards took the stock. She took the subscription for fifty thousand dollars.

Q. How did she pay for it?

A. She paid for it at the time when everybody else paid for it—some in cash on subscription, by surrendering this note, and by surrendering some notes of the Carters which she had bought.

Q. She bought what notes of the Carters?

A. Notes that were given for the purchase of the Bibb Furnace property.

Q. She purchased these notes and paid for them with her own money?

A. Yes, sir.

Q. And when she came to settle for her fifty thousand dollars of stock she surrendered the Carters' notes and that note?

A. Yes, sir.

Q. Then the company actually received fifty thousand dollars in cash from her for that subscription of stock?

A. Yes, sir.

Q. In that way?

A. Yes, sir.

Q. When was this company organized?

A. In 1882.

Q. At that time what, in the aggregate, was the estate of Mrs. Peter in available assets—things easily converted into money—stock, bonds, and things of that sort and money?

A. I think Mrs. Peter's separate estate at that time was

501 worth four hundred thousand dollars.

Q. In 1882?

A. In 1882.

Q. Do you mean the lands she owned or her cash assets?

A. I mean things that could be easily converted into cash, outside of real estate. She had assets—stocks, bonds, and so forth—which were worth four hundred thousand dollars.

Q. You are speaking of her separate estate?
A. Yes, sir.
Q. Where did she reside?
A. At Waukesha, Wisconsin—Waukesha county.
Q. That has been her home for the past ten years?
A. Yes, sir.
Q. She has been at other places, but that is her home?
A. That has been her home.
Q. Did Mrs. Peter ever make any subscription to the stock of this company other than this fifty thousand dollars?

London objects on the ground that the records themselves show.

A. No, sir.
Q. Did Mrs. Peter ever authorize anybody else to make any subscription for her to that company?
A. Not that I know of.
Q. For her?
A. Not that I know of. She never authorized me. I made it at first for her myself.
Q. Did she ever have any other certificates of stock other than for this fifty thousand dollars?
A. No, sir.
502 Q. I see on the books here—I see certain certificates of stock issued to a trustee for her benefit or as trustee for her. Did Mrs Peter ever authorize those certificates to be issued?
A. No, sir.
Q. Did she ever have them in her possession or either of them?
A. No, sir.
Q. Where were they?
A. In the safe of the Brierfield Coal & Iron Company from the time they were issued to the time when they were returned and cancelled.
Q. Some were not returned and cancelled. Where are they?
A. My son has certificates issued to him as trustee.
Q. Where is the other?
A. Mrs. Peter has one issued to her. My sister, Mrs. Williams, has one issued to her.
Q. How much did you pay on the stock which you subscribed for; how much had you paid when this suit was commenced?
A. About eighty-three thousand dollars, I think. It was correct as Mr. Murray stated it.
Q. That is, eighty-three thousand and odd dollars?
A. Yes, sir.
Q. Of that stock that you subscribed for, how much was issued to trustee for the benefit of Mrs. Peter—of the stock you subscribed for? You say you paid eighty-three thousand dollars on it before the suit was commenced. Of that amount how much was issued to trustee for the benefit of Mrs. Peter?
A. I don't know that I understand your question. 697
503 shares in a certificate and forty to me in one as trustee for my wife. Her certificate was issued to her.

Q. For fifty thousand dollars?
A. Yes, sir.
Q. That is all?
A. Mrs. Peter has two certificates of stock now.
Q. The one for fifty thousand dollars she subscribed for and paid for?
A. Yes, sir; and one to Edward S. Peter as trustee for 697 shares.
Q. Before this certificate for 697 shares as a part of the stock you subscribed for and paid on stock eighty-three thousand dollars?
A. Yes, sir.

London objects, because it appears from the subscription book that it is a part of the 2,859 shares which were issued to T. J. Peter as trustee for Mrs. E. A. Peter.

Q. Did Mrs. Peter ever have in her possession, as her own, any other certificate of stock than these two?
A. She never had but the one. She has not that now; my son has that. She has only the fifty thousand dollars which she paid for.
Q. What was the purpose of having that stock in the name of Edward Peter, trustee for Mrs. E. A. Peter, number 40?

London objects on the ground of illegality and irrelevancy.

A. I owed my wife and sister money, and these certificates of stock were issued to be held as collateral, so that if any money could be made out of them it could be paid to them for the money I owed them.

504 Q. How much money had you borrowed from your wife which you had put into that concern? You got some money from your wife to put into that concern for yourself; how much was that?

London objects to the question on the ground of irrelevancy and illegality.

A. All of the money which I paid on account of my stock I borrowed from my wife and sister.
Q. How much was that security for?
A. It was for the eighty-three thousand dollars paid on my stock, less the ten thousand dollars I borrowed from my sister; seventy-three thousand dollars in round figures.
Q. That is, of your wife's money which you put into this concern for yourself?
A. Yes, sir.

By LONDON:

Q. What was your financial condition when the Brierfield Coal & Iron Company was organized?
A. I had about fifty thousand dollars of my own money?
Q. In order to pay the eighty-three thousand dollars that you paid you had to borrow seventy-three thousand dollars?
A. The eighty-three thousand dollars which I paid on stock was all borrowed money; either in money or coupons.

Q. So you have never paid any of your money into the concern?
A. It was all my money. I mean after I borrowed it.
Q. Then you never paid anything except what you borrowed?
A. Yes, sir.
Q. How much?
505 A. I subscribed. I paid fifty thousand dollars and received——
Q. Didn't you subscribe for one hundred and twenty shares of *the* that stock?
A. I subscribed for T. J. Peter and associates and in that name. I failed to get them to join me in it and I assumed it. I paid fifty thousand dollars in my own money and received bonds. I got my wife to take the remainder.
Q. Does not this account include all that was paid by you and your wife?
A. Yes, sir; up to that time.
Q. How many bonds did Mrs. Peter get?
A. Out of the 281 all except the sixty I got and paid for at ninety cents on the dollar.
Q. She got her share of the 281?
A. Yes, sir; she got them and paid for them.
Q. That certificate #36; look at it. Whose handwriting is that endorsement, "This stock is held by me for Mrs. Peter, whose money paid for it?"
A. Mine.
Q. Who paid for that?
A. There had been no money paid at that time.
Q. Please explain, then, what you mean in that endorsement by saying that her money paid for it.
A. I put that endorsement on it to put it away in the safe, so in case of death or anything of that kind if anything was received on it she would have her money.
Q. Mrs. Williams was not concerned?
A. Afterwards she was.
Q. This stock was issued to you?
A. Yes, sir.
506 Q. And pledged to your wife as collateral?
A. I put it away in the safe, so that if I should die she would get the money.
Q. Then the endorsement was not a fact?
A. No, sir; no money had been paid at that time.
Q. What was the date of issue—October 28, 1884? No money had been paid at that time?
A. No, sir.
Q. Then the credits to T. J. Peter for June, 1884, are not true—of money paid to stock?
A. Yes; on account of stock and bonds.
Q. But you say no money had been paid on account of stock when that certificate was issued?
A. No, sir.

Q. Are those entries true which Mr. Murray stated were on the account of T. J. Peter after June, 1884?

A. No money was paid on stock between October and June, 1884. There was no money paid at all until June, 1886, but coupons were turned in, and those that matured October were received on account of assessments on stock.

Q. You explained in regard to the original understanding that you were to get bonds and the stock was to be a bonus.

A. That was the theory.

Q. In order to pay your stock subscription the coupons were cut from these bonds?

A. After this time.

Q. All previous coupons?

A. Yes, sir.

Q. That was continued up to the time the company ceased to do business?

507 A. Some of them would not even pay coupons.

Q. So that 2,859 shares we have talked about—that certificate was simply fictitious?

A. So far as that went it was issued to me.

Q. Your wife got bonds on that stock?

A. No, sir; she got the bonds she paid for.

Q. Was not that stock issued in connection with bonds?

A. I got bonds from the company. I gave them to her.

Q. Did you borrow two hundred and eighty thousand dollars from her?

A. More than that; all the money which was paid in on account of T. J. Peter, except about fifty or fifty-five thousand dollars of my own money and ten thousand from Mrs. Laura E. Williams, I got from her.

Q. Under this arrangement that the bonds were to be hers and the stock yours?

A. Mrs. Peter's money was invested in bonds with the exception of the fifty thousand dollars which she invested in the original subscription.

Q. She didn't know she was to get any stock as a bonus?

A. No, sir.

Q. You never told her about it?

A. No, sir.

Q. Did you tell her that you had that stock certificate as collateral?

A. No, sir.

Q. If that was your certificate why did you put trustee to it?

A. For several reasons; for the reason that if anything occurred to me to secure Mrs. Peter.

Q. That is the way Mrs. Peter happened to get the bonds?

A. Yes.

508 Q. By the stock being issued under your subscription contract it could not be owned except by stockholders?

A. Yes; Mrs. Peter bought one hundred and twenty bonds; Mrs. Peter got the fifty she had paid for; I paid for sixty more. There

were sixty more I could not pay for; she paid for them and got them.

Q. That took up three hundred and seventy-five; there was one hundred and twenty-five left yet?

A. Of bonds. Those she purchased and paid for all appear in that account of T. J. Peter.

Q. All appear there?

A. Yes, sir.

Q. You kept your- and hers together?

A. I didn't know that until recently. I never looked over the books. I checked over with Murray the money I had advanced to him. He would say the proper credit had been given. When the bonds were issued I got them.

Q. Were you trustee for Mrs. Peter?

A. No, sir.

Q. Never authorized to get stock for her?

A. No, sir.

Q. But you signed for it?

A. As trustee, but not for her as trustee.

Q. Then you never were her trustee?

A. No, sir.

Q. Were you president of the company?

A. Yes, sir.

Q. Did you ever sign for any of her stock otherwise?

A. I may have done so; probably did; she was not here.

509 Q. When did you first learn that the original plan under which this organization was supposed to be conducted was invalid?

A. Prior to the resolution which levied the thirty per cent. assessment. The assessment prior to that had been paid in coupons by the consent of all the bondholders. I had learned from — source just prior to June, 1886, that the stock was liable to be assessed in full; that it would have to be paid in full under the Alabama statutes.

Q. That was as early as June, 1886?

A. Just prior to that.

Q. At the time of the failure of the company you were the owner of only one share of the stock?

A. Yes, sir.

Q. All the rest had been transferred to Mrs. Peter and Mrs. Williams?

A. To my son as trustee for Mrs. Peter and Mrs. Williams.

Q. You had received certificate # 6, for 170 shares?

A. Yes, sir.

Q. # 21, for 150 shares?

A. Yes, sir.

Q. # 30, for 1,290 shares?

A. Yes, sir.

Q. # 32, for 480 shares?

A. Yes, sir.

Q. # 35, for 1 share?

A. Yes, sir.

Q. So you had received certificates up to that time for shares amounting to 2,091 shares?

A. Yes, sir.

Q. It was after that time—when was the certificate # 36 issued to you?

A. October 28, 1884.

Q. It was after that time that you learned that the original scheme would not work out?

A. Yes, sir.

Q. And you had disposed of 2,090 shares of the stock for which certificates had been issued to you between that time and the time the corporation ceased to do business?

510 A. I had disposed of it. Yes; I transferred 1,160 shares of it to the company.

Q. Surrendered it?

A. Yes, sir; the remainder I transferred to my son as trustee for his mother and my sister, Mrs. Laura E. Williams.

Q. They are both married?

A. My wife is; my sister is a widow.

Q. The coupons on the bonds issued to Mrs. Peter were credited to your and her account on the stock subscription?

A. Not to her account; to my account.

Q. The sum of five thousand dollars of interest on the thirty-four-thousand-dollars note went to her credit?

A. No, sir; it went to my credit.

Q. It was added into the fifty-six thousand dollars?

A. Yes, sir; but not a part of the fifty thousand dollars she paid in settlement of her stock.

Q. Didn't Mrs. Murray testify that that fifty-six thousand dollars was made in part of that five thousand dollars interest?

A. She only paid fifty thousand dollars.

Q. Is it in your six or her fifty?

A. She paid hers in notes at their face value, and the interest on them was, of course, added to those.

Q. Was interest added to the others?

A. The interest as it matured was credited to me, on my account.

Q. It was credited to you?

A. Yes, sir.

Q. Your account was her account on those books?

511 A. Except for that note.

Q. The note simply represented a balance?

A. The note represented money which I had borrowed from her.

Q. Didn't it represent a balance after charging the bonds and allowing credit for the discount?

A. No, sir; Mr. Murray made a mistake in regard to that matter.

Q. Look at the account before you. What are the credit items and what do they amount to?

A. During these three months; all of them.

Q. That money was borrowed in June, 1844, from her?

A. It was sent here by me to Murray as I sold her securities.

When I came back from the East I told him about it all, and he made a cross-entry at the time.

Q. Was that thirty-four-thousand-dollar note—didn't it exactly balance that account?

—. The thirty-four and two hundred and eighty does, because there was an entry there at that time.

Q. Thirty-four thousand represents the difference between the amount of the bonds and the credits?

A. In the total. The thirty-four thousand had nothing to do with this money. I had borrowed that money for that purpose, and agreed to give a note and gave it.

Q. That note was given when?

A. June 30, 1884, as that was the average date of the payments.

Q. At the same time she was indebted to the company in the sum of fifty thousand dollars?

512 A. Yes, sir; if stock had to be paid for.

Q. Under the supposed arrangement at that time nobody supposed they owed anything on stock subscription?

A. No, sir.

Q. These Huckabee bonds and stock you speak of—was not Mr. Huckabee a subscriber to the stock of the company under this arrangement that you had whereby he was to receive fifteen bonds and fifteen thousand dollars stock in payment of the balance of the fifteen thousand dollars due to him at that time?

A. Yes, sir.

Q. The fifteen thousand dollars for which his name appears on the report made to the judge of probate should be that the company owed him?

A. Fifteen thousand and five thousand in McCally's name.

Q. Twenty thousand dollars in all?

A. Yes, sir.

Q. The other twenty-five thousand dollars was paid in cash to him?

A. Yes, sir; twenty-five thousand dollars was paid to him in cash.

Q. The bonds received under this original understanding were adopted by the board of directors afterwards?

A. Yes, sir.

Q. Can you tell by looking at that book—the subscription book—what the date of that agreement was in regard to the stock and bonds?

A. The date is there. Here is the resolution of subscription; no date to it. Here is the second subscription. I can't tell. It was done in a short time—about the time these other things were

513 done. At first these gentlemen had authorized me to sign their names, but afterwards, for the sake of better protection, I thought it better to have them sign it again. I went East about this time, and then had them to make their subscription over again.

Q. That was after May 4th?

A. I think it was.

Q. What is the date of the certificate of the judge of probate?

A. May 5th. It was, then, after May 5th, 1882.
Q. It was after the company had been organized?
A. Yes, sir; I think it was. I think so from the manner in which it comes in here.
Q. Didn't you go East after the company was organized?
A. Yes, sir; I think it was subsequent to the 4th day of May, 1882. I think I went directly East and got the subscriptions.
Q. This subscription refer-ed to is the one set out in his deposition found in the examination of T. J. Peter on March 12, 1889?

By MARKS:

Q. How many shares of the capital stock of the Brierfield Coal & Iron Company did you subscribe to?
A. Twelve hundred.
Q. As to this certificate about which Mr. London questioned you, did they represent each one different shares of stock, or were some of them duplicates?
A. I cannot tell now.

London objects on the ground that the certificates themselves show what they were.

Q. Did you ever hold any certificates for any shares other
514 than those for the twelve hundred for which you subscribed?
A. It is apparant that I did.
Q. Did you ever hold any such other than this #36 and those for which you subscribed in the original subscription?
A. I don't know.
Q. Did you ever pay for all the stock subscribed to by you in this company?
A. I paid for the twelve hundred shares.
Q. Does this account in this general ledger, 246–7, show the payments made by you as far as it goes?
A. I think so.
Q. Q. Did you make any payments since the last payment of that account?
A. Yes, sir.
Q. State how much.
A. I don't remember now. It is in the other evidence. The figures are found in the other testimony. They are correct as to the payments.
Q. Was it agreed between you and the directors and the stockholders that you should endorse certain papers of the company?
A. Yes, sir.
Q. And be allowed credit on your stock account?

London objects to this matter, as it is shown by the proceedings of the company.

Q. It was agreed that if I made these endorsements I should have credit on my stock subscription, and afterwards it took the form of a resolution.

London moves to exclude the answer on the ground of irrelevancy and illegality and on the further ground that the directors
515 and stockholders could not agree after insolvency to credit on stock subscriptions a debt due to Major Peter.

Q. This agreement with the directors and stockholders was entered into before the endorsements were made?

A. Yes, sir.

Q. How much money have you paid out on account of these endorsements?

A. About thirty thousand dollars; more than that—nearly forty thousand. I have not paid out any money. They received my notes in lieu of the notes of the company.

Q. Discharging the company from all liability?

A. Yes, sir.

Q. Do you know the amount of the liabilities from which the were discharged?

A. It is all set forth in the other testimony.

Q. It is correct as stated there?

A. Yes, sir.

Q. When you transferred your certificates of stock in that company did you do so with any intent to avoid liability as a shareholder?

London objects on the ground of illegality and irrelevancy and that you cannot prove intent in the manner proposed.

A. No, sir.

Q. What was the consideration for that transfer?.

A. Well, the 1,160 shares cancelled I had learned were illegal, and therefore I returned them to the company. The other was made for the purpose of protecting the persons from whom I had borrowed money.

516 Q. The transfer was made in payment of a debt?

A. As collateral security. The stock had no value—no market value—at that time.

Q. This 1,160 shares—was that transferred to the company on demand of the directors?

A. Yes, sir.

Q. Is there any record of that?

A. There is a resolution showing it.

Q. Is there any evidence of that demand?

A. In that resolution; that is all.

London objects to the answer and moves to exclude it on the ground that the resolution speaks for itself.

Q. Did you ever have any dividends or benefit from that 1,160 shares or vote it at any meeting of the shareholders?

London objects on the ground of illegality and irrelevancy.

A. No, sir.

By THORINGTON:

Q. Prior to the time when the thirty per cent. assessment was made had it ever been called to the notice of the stockholders or directors that their original plan of subscription was invalid?

Q. No, sir.

Q. You were president of the company at that time?

A. Yes, sir.

Q. Did you know that the plan of subscription was not authorized by the laws of Alabama?

A. Not until shortly before the thirty per cent. assessment was levied.

Q. Do you know whether any other stockholders or directors knew that it was unauthorized?

A. I know they did not.

517 London moves to exclude the answer on the ground that the parties are charged with a knowledge of the law.

Q. After the stockholders became informed that this plan of subscription was unauthorized by the laws of Alabama that thirty per cent. call was made?

A. Yes, sir.

Q. The stockholders were not informed until that time?

A. No, sir; they had not. I had been informed, and I had the directors pass this resolution and explained the matter to them.

Q. After the assessment of thirty per cent. was made you explained to the stockholders the law of Alabama on this mode of subscription?

A. Yes, sir; and told them that they would have to pay it.

Q. Was any part of the thirty per cent. called for paid in money?

A. Yes, sir; some time afterwards; perhaps it was a year afterwards before we were able to collect it. At that time I collected from Thomas, Brice, and Seeney, and as soon as they made their payment my wife paid up in full.

Q. In money?

A. Yes, sir.

Q. Were any calls made after the thirty per cent.?

A. I don't think there were, but there may have been.

Q. What was the total amount called for?

A. Fifty-seven per cent. The records of the directors show fifty-seven per cent. levied.

Q. Do you know what per cent. of that fifty-seven per cent. was paid in money and what part in coupons?

A. I don't now; I did, but I have forgot.

518 By LONDON:

Q. Before or about the time this thirty per cent. assessment was made were all the stockholders then informed that the original plan was invalid?

A. Shortly afterwards.

Q. It was about that time?

A. Yes, sir.

Reference adjourned to meet at ten o'clock on Monday, the first day of July, 1889.

T. J. PETER.

UNITED STATES OF AMERICA,
Middle District of Alabama.

In the Circuit Court of the United States for the Midd-e District of Alabama.

HOLLINS, SONS & CO. *et al.*
vs.
BRIERFIELD COAL AND IRON COMPANY *et al.*

I, Fred. S. Ball, special examiner appointed by the court to take the testimony in the above-entitled cause, hereby certify that the foregoing examination of John G. Murray, Thomas J. Peter, and S. Roman, contained on pages 1 to (56) fifty-six, both inclusive, were taken by me in presence of counsel at the times therein stated, and were by me reduced to writing and signed by the said several witnesses, who before said examination were duly sworn to speak the truth, the whole truth, and nothing but the truth.

In witness whereof I have hereunto set my hand and seal this 2nd day of July, 1889.

FRED. S. BALL, [SEAL.]
Special Examiner.

519 HOLLINS, SONS & CO.
vs.
BRIERFIELD COAL & IRON CO.

In reference before the special examiner, Fred. S. Ball, July 1, 1889, at ten o'clock.

Present: Gen. Pettus and A. T. London.

Examination of JAMES T. FITZGERALD, a *testimony* on his own behalf, who, being duly sworn, testified as follows:

By Gen. PETTUS:

Q. Mr. Fitzgerald, you obtained some bonds of the Brierfield Coal & Iron Company from C. C. Huckabee?

A. I did.

Q. How many?

A. Thirteen.

Q. Of what denomination?

A. One thousand dollars each.

Q. Before you obtained these bonds from Mr. Huckabee what did he tell you as to how he paid for them, whether he paid for them or not?

A. He told me they were given to him as payment for purchase-money.

Q. Of what?

A. Property he had sold to the Brierfield Coal & Iron Company

or Mr. Peter, I don't know which.

Q. Property he sold the Brierfield Coal & Iron Company or Mr. Peter. The company, he said, owed him for the purchase-money for property?

A. Yes, sir.

Q. He said they gave him these bonds in payment to that extent?

A. Yes, sir.

Q. Did Mr. Huckabee before you got these bonds from him tell you anything about paying for stock with the same money?

520 A. No, sir; I didn't know he had any stock.

Q. Did he tell you anything about his subscribing for any stock?

A. No, sir.

Q. Did he tell you anything about these bonds being a prior lien for purchase-money?

A. I don't know that he told me at that time. He told me they gave them to him as purchase-money.

Q. For property he had sold to the Brierfield Coal & Iron Company?

A. Yes, sir.

Q. Did you at that time know or had you heard about the terms of subscription on which men subscribed for stock in that company?

A. No, sir. I never knew and I never heard.

London moves to exclude the last question and answer on the ground of illegality and irrelevancy.

Q. What did you pay for these thirteen bonds?

A. I considered that I paid thirteen thousand dollars.

London moves to exclude what he considered he paid.

Q. Well, you paid value for them?

A. Yes, sir; I paid value for them.

Q. Was it in money or in property?

A. Both.

Q. How much property and how much money?

A. I paid him about eighty-eight or ninety hundred, I forget which, in money; somewhere between those amounts in cash money, and I gave him a half interest in a cotton-seed-oil mill which cost more than that.

521 Q. About what was the value of the half interest in the cotton-seed-oil mill?

A. We valued it at seventy-five hundred dollars; that was about the value of it?

Q. The whole value of it?

A. Yes, sir; and I had a half interest in it.

Q. That is your estimate now of the value of it, of what it was worth at that time?

A. Yes, sir.

Q. Then in property and in money you paid him thirteen thousand dollars for these bonds?

A. Yes, sir; I paid him cash between eighty-eight and ninety-

two hundred dollars; that is about what it was, and the half interest in the cotton-seed-oil mill.

Cross-examination by Mr. LONDON:

Q. These thirteen bonds, Mr. Fitzgerald, that you speak of are first-mortgage bonds of the Brierfield Coal & Iron Company filed by you in the case of Chambers, trustee, *vs.* The Brierfield Coal & Iron Company?

A. Yes, sir.

Q. They were delivered to you by Mr. Huckabee?

A. Yes, sir.

Q. Where are they now?

A. They are here in the clerk's office. They have been filed and marked filed in the other case.

Q. You say that Mr. Huckabee told you that they had been given to him in payment of purchase-money for lands sold to the company or Mr. Peter?

A. Yes, sir.

Q. Nothing was said about stock?

A. No, sir.

Q. Mr. Huckabee didn't tell you what the organization of the company was?

A. No, sir.

522 Q. Did he tell you what the security was?

A. I had or got a copy of the mortgage. I knew that. At least I had sent for a copy and Mr. Murray sent me a copy of the mortgage. Mr. Huckabee told me, too, that the bonds were secured by a mortgage on the property. He told me that.

Q. Did Mr. Huckabee tell you anything about who were the parties interested in this Brierfield Coal & Iron Company?

A. He might have done so. I don't recollect. I knew most of them, anyhow.

Q. Knew the men of the Brierfield Coal & Iron Company?

A. I knew some of them. I knew Mr. Peter and had heard of his associates.

Q. Did you ever have any conversation with Mr. Peter in regard to these matters?

A. I wrote to him a letter asking him about it and asked him about the value of these bonds, and he replied that the bonds were of good value.

Q. Did he tell you anything about the organization of the company?

A. I don't think he did.

Q. You made no further investigation?

A. No, sir; nothing but to find out about the property.

Q. But as to the manner of issue, terms, etc.?

A. I just knew the bonds were secured by mortgage on the property.

Q. Mr. Huckabee just transferred—delivered you the thirteen bonds?

A. And I paid for them.

J. T. FITZGERALD.

523 UNITED STATES OF AMERICA,
Middle District of Alabama.

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. *et al.*
vs.
BRIERFIELD COAL & IRON CO. *et al.*

I, Fred. S. Ball, special examiner appointed by the court to take testimony in the above-entitled cause, hereby certify that the foregoing examination of James F. Fitzgerald, contained on pages one to three, inclusive, were taken by me in the presence of counsel at the times stated therein and reduced to writing by me and signed by the said witness, who, before said examination, was duly sworn to speak the truth, the whole truth, and nothing but the truth.

In witness whereof I have hereunto set my hand and seal this 2nd day of July, 1889.

FRED. S. BALL, [SEAL.]
Special Examiner.

524 *Note of Testimony Taken upon Submission.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & CO. *et al.*
vs.
THE BRIERFIELD COAL & IRON CO. # 107.

This cause is submitted on pleadings and testimony as follows:

1. Complainants offer in evidence decree *pro confesso* against Preston B. Plumb, Carrie S. Plumb, Justin S. Morrill, and Laura E. Williams, non-resident defendants.

2. The depositions of Thomas J. Peter, John G. Murray, C. C. Huckabee, S. Roman, taken before the special examiners in this cause.

3. The examination of John G. Murray, taken before the master in the cause of W. L. Chambers, trustee, *vs.* The Brierfield Coal & Iron Co.

4. The original bill and amendments thereto in the case of W. L. Chambers, trustee, *vs.* The Brierfield Coal & Iron Co.

5. The answers of the defendants in the same case.

6. The orders and decrees in case of W. L. Chambers, trustee, against The Brierfield Coal & Iron Co. authorizing the issue of trustee certificates.

7. The record of the proceedings of the Brierfield Coal & Iron Company, being two books of directors' and the stockholders' meetings—

525 Referred to in the examination of T. J. Peter and John G. Murry, being the whole of Minute Book No. 1 and pages 25,

26, 27, 28, 30, 31, 32, 33, 34, 35, and 36, record book, marked B. C. & I. Co.; the original stock-certificate book of the Brierfield Coal and Iron Co. down to and including No. 43 and stub of certificate *of* No. 240.

9. The accounts of T. J. Peter, pages 246; C. S. Plumb, 248; Samuel Thomas, Justin S. Morrill, 249; C. C. Huckabee, R. L. McCally, 250; John G. Murray, Samuel Thomas, 251; George I. Seney and C. S. Brice, 252; E. A. Peter, 253, as shown by the general ledger of the Brierfield Coal and Iron Company, on pages given.

The defendants, The City National Bank of Selma, The Commercial Bank of Selma, James T. Fitzgerald, and Esther A. Peter, severally and separately read in evidence the following testimony:

1st. The orders and decrees of this court, including the final decree rendered in *this* case of W. L. Chambers, trustee, *vs.* The Brierfield Coal and Iron Company and others, which were not read in evidence by complainants.

2. The answers of each of the said defendants to complainants' bill in this case.

526 3. All the evidence taken before the master in the case of W. L. Chambers, trustee, against The Brierfield Coal and Iron Co. *et als.* which was not read in evidence by the complainants in this case, and all the bonds and other writings given in evidence before the master in the said case of W. L. Chambers, trustee, *vs.* The Brierfield Coal and Iron Co., including the original of the two mortgage deeds, of which copies are attached to complainants' bill in this cause, which were executed by the said Brierfield Coal and Iron Company to said Preston B. Plumb as trustee.

4. All the evidence which was taken in this cause before the special examiners appointed by the court which was not read in evidence for complainants.

5. The act of the General Assembly of Alabama approved December 12, 1884, entitled "An act to amend and ratify the charter of the Brierfield Coal and Iron Co. of Bibb County, Alabama," to which the complainants object on the ground that this act is not evidence for the defendants under the pleadings in this cause.

6. The certified transcript of the proceedings for the organi-
527 zation of the company, which appears on pages from one to 18, both inclusive, book*ed* marked *number* Book No. 1, offered in evidence by complainants, which is admitted by complainants to be a correct transcript.

7. Chapter 108 of the Revised Statutes of Wisconsin, edition of 1878.

1st. Defendants, Samuel Thomas, George I. Seney, and C. S. Brice, offer in evidence their joint and separate answer herein.

2. The testimony as hereinbefore offered and noted by the other defendants herein.

3. The record, proceedings, orders, and decrees in the case of W. L. Chambers, trustee, against The Brierfield Coal and Iron Company and others, including the depositions of these defendants.

The defendants, The Brierfield Coal and Iron Company, Thomas J. Peter, and John G. Murray, offer in evidence separately and sev-

erally—1st, the answers of each of said defendants; 2d, the testimony offered by the other parties defendants, as hereinabove noted.

Filed the 18th day of July, 1889.

J. W. DIMMICK, *Clerk.*

528 *Application for Leave to File Amended Bill.*

HOLLINS, SONS & CO. *et als.*
vs.
BRIERFIELD COAL AND IRON COMPANY *et al.* } # 107.

The complainants in the above-entitled cause now move your honors for leave to file the amended bill of complaint which was offered to be filed on the 2d day of July, 1889, filed on the 5th day of July, 1889, and disallowed by the orders of the court on the 18th day of July, 1889.

TROY, TOMPKINS & LONDON,
Comp'ts' Sol's.

Filed the 19th day of July, 1889.

J. W. DIMMICK, *Clerk.*

Final Decree.

HOLLINS, SONS & CO. *et als.*
vs.
THE BRIERFIELD COAL & IRON COMPANY *et als.* } 107.

WEDNESDAY, *July* 24, 1889.

This cause came on to be further heard on the 19th day of July, 1889, a day of said term, and was submitted for decree by the parties on the pleadings and testimony and decree *pro confesso* and motion to dismiss the bill for want of equity and on motion of complainants to amend the bill of complaint; and, after full argument by counsel of the parties and on due consideration by the court, it is ordered that the motion of complainants to amend the bill of complaint be, and the same is hereby, denied.

And the court, proceeded to examine and consider the cause on the merits, is of the opinion that the proof fails to establish the case made by the bill, and that the complainants are not entitled to relief.

It is therefore ordered, adjudged, and decreed by the court that the bill of complaint be, and the same is hereby, dismissed out of this court at the costs of complainants, to be taxed by the clerk, for which execution may issue.

529 *Order Allowing Appeal to the Supreme Court U. S.*

In the Circuit Court of the United States for the Middle District of Alabama.

HOLLINS, SONS & Co. and Others
vs.
BRIERFIELD COAL AND IRON COMPANY & Others. } In Equity. # 107.

The complainants in the above-entitled cause having prayed an appeal to the Supreme Court of the United States from the decree dismissing the bill of complainants in open court, it is ordered, adjudged, and decreed that the said appeal be allowed.

And it is further ordered that the amount of the supersedeas bond be fixed at fifteen hundred dollars, to be conditioned and payable as required by law.

Aug. 20, 1889.

JOHN BRUCE, *Judge.*

Filed this 20th day of August, 1889.

J. W. DIMMICK, *Clerk.*

530 *Appeal Bond.*

Supreme Court of the United States.

HOLLINS, SONS & Co. and Others
vs.
BRIERFIELD COAL & IRON CO. & Others. } # 107.

Know all men by these presents that we, R. S. Hollins, Jr., W. F. Vandiver, Charles L. Gay, and L. I. Goeter, are held and firmly bound unto Brierfield Coal & Iron Company, W. L. Chambers as trustee, Thomas J. Peter, Esther A. Peter, John G. Murray, C. C. Huckabee, City National Bank of Selma, Commercial Bank of Selma, Alabama; National Bank of Birmingham, Preston B. Plumb, Carrie S. Plumb, Justin S. Morrill, George I. Seney, Calvin S. Brice, Samuel Thomas, Laura E. Williams, M. S. Pomeroy, J. T. Fitzgerald, W. D. Carter, Kearsley Carter, and R. L. McCalley in the sum of fifteen hundred dollars, to be paid to the said several named obligees, their and each of their successors, executors, and administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 20 day of August, 1889.

531 Whereas Hollins, Sons & Co. and Fite, Porter, Lyles & Co., the complainants in the above-entitled cause, have taken an appeal to the Supreme Court of the United States to reverse the decree rendered therein by the circuit court of the United States for the middle district of Alabama:

Now, therefore, the condition of this obligation is such that if the said Hollins, Sons & Co. and Fite and Porter, Lyles & Co. shall prosecute their said appeal to effect and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

R. S. HOLLINS, JR. [SEAL.]
W. F. VANDIVER. [SEAL.]
CHAS. L. GAY. [SEAL.]
L. J. GOETTER. [SEAL.]

Witness:
ALEX. TROY.

In chamber, Birmingham, Ala.

The above and foregoing bond is hereby approved.
JOHN BRUCE, *Judge.*

Sept. 2d, '89.

Filed the 4th day of Sept., A. D. 1889.
J. W. DIMMICK, *Clerk.*

532 # 103.

Original Bill.

In the Circuit Court of the United States for the Middle District of Alabama, on the Equity side of said Court.

To the judges of the circuit court of the United States for the middle district of Alabama:

Preston B. Plumb, a citizen of the State of Kansas, brings this his bill of complaint against the Brierfield Coal & Iron Company, a citizen of the State of Alabama, an incorporation, having its principal office at Brierfield, in Bibb county, in Alabama, and Thomas J. Peter, who is a stockholder in said company, and is also president of said company, who is a citizen of Alabama, and resides at Brierfield, in said county of Bibb, and Caswell C. Huckabee, who is a citizen of Alabama, and resides in Perry county, Alabama, and Robert L. McCalley, a citizen of Alabama, who resides in Calhoun county, in said State, and John G. Murray, a citizen of Alabama, who resides in said county of Bibb, and the City National Bank of Selma, a banking corporation chartered and organized under the laws of the United States, located and doing business at Selma, in Dallas county,
533 a citizen of said State, and the Alabama National Bank, a banking corporation chartered and organized under the laws of the United States, and located and doing business at Birmingham, in Jefferson county, Alabama, a citizen of said State, and the Commercial Bank of Selma, a private banking corporation chartered and organized under the laws of Alabama, and located and doing business at Selma, in Dallas county, in said State, a citizen of Alabama, and J. T. Fitzgerald, who is a citizen of the State of Alabama, and resides in the county of Perry, in said State, and M. S. Pome-

roy, a citizen of the District of Columbia, and Mrs. Carrie S. Plumb, a citizen of the State of Kansas, residing at Emporia, in said State, and Mrs. Esther A. Peter, wife of said Thomas J. Peter, a citizen of Alabama, and Justin S. Morrill, a citizen of Vermont, residing at Strafford, in said State, and George I. Seney, Calvin S. Brice, and Samuel Thomas, citizens of the State of New York, each of whom resides in the city of New York, and Edward T. Peter and Charles Bates, citizens of Alabama, who reside in Bibb county, and Laura E. Williams, a citizen of Ohio, residing at Cincinnati; and thereupon your orator complains and says that on the 4th day of May, 1882, such proceedings were had and completed before the probate judge of Bibb county, Alabama, that Caswell C. Huckabee, Thomas J. Peter, and Robert L. McCally
534 were constituted an incorporation under and in pursuance of the laws of Alabama, and said company was duly incorporated and organized under the corporate name of the Brierfield Coal & Iron Company for the purpose set forth in the petition of said persons before that time filed in the office of said judge of probate, which are, in substance, the purchase of real and personal property for the production, manufacture, and sale of iron and the mining of coal, the manufacture of coke, and the building of railroads to connect the several properties which said company then contemplated purchasing and improving. Said incorporators were appointed as commissioners to open books of subscription to the stock of said company and receive subscriptions for said stock. The stock of said company was fixed at seven thousand five hundred shares of one hundred dollars each, and said stock to the amount of three thousand seven hundred and fifty shares was taken by the persons hereinafter stated on the 4th day of September, 1882. The subscriptions of stock, as they appear upon the books of said company, are as follows:

T. J. Peter and associates	$120,000 00
E. A. Peter	50,000 00
R. L. McCalley	5,000 00
C. C. Huckabee	15,000 00
G. I. Seney and associates	75,000 00
535 C. S. Plumb	50,000 00
Plumb & Hood	50,000 00
Justin S. Morrill	10,000 00

Orator states that Thomas J. Peter, by his authority, subscribed for the stock in the foregoing list in the name of C. S. Plumb and Plumb & Hood. The subscription was, in fact, made for Mrs. Carrie S. Plumb, the wife of orator, as an investment for the benefit of the separate estate of Mrs. Carrie S. Plumb, and the payments made thereon were made from her separate estate, and the certificates for such stock were issued to her upon and in virtue of both of said sub-*sub*scriptions and to the full amount thereof, so that neither your orator nor Calvin Hood ever became the owners of said stock or any stock in said Brierfield Coal and Iron Company or any of the bonds of said company. Since the subscriptions of stock were made as

above stated transfers of stock in said company have been made as follows:

Thomas J. Peter has assigned on the books of said company one share to Edward T. Peter and six hundred and ninety-seven shares to Edward T. Peter as trustee for Esther A. Peter, and one share to Charles L. Bates, and five hundred shares to Laura E. Wil-
536 liams. The stock of George I. Seney and associates has been increased and divided as follows: The stock subscribed for by George I. Seney and associates was by the direction of said Seney issued in the name of A. O. Beebe, who afterwards transferred thirty shares of the same to C. S. Brice, and the remaining shares standing in the name of said A. O. Beebe belongs in fact to Samuel Thomas, who owns four hundred shares thereof. For some reason unknown to orator the name of said Beebe was employed in said transaction, he having in fact no interest in any part of said stock. Since said original subscriptions of stock were made said company has sold to John G. Murray six shares of the stock thereof, which is duly paid up, and said shares are now held and owned by him; so that the entire stock of said company already taken is thirty-eight hundred and thirty-six shares of one hundred dollars each. The books of said company show that the following payments have been made upon the stock of the several holders thereof, either by themselves or their assignors: On the stock of Carrie S. Plumb the sum of $43,089.78; on the stock of Justin S. Morrill, $6,250.00;
537 on the stock of Samuel Thomas, $23,745.00; on the stock of C. S. Brice, $810.00; on the stock of G. I. Seney, $22,800.00, and on the stock of Esther A. Peter, $50,000.00, and on the stock of T. J. Peter, $83,640.85, and on the stock of John G. Murray, $600; said shares of stock are liable, in the hands of the present holders, to be assessed for the payment of any sum remaining due and unpaid thereon. Orator has neither the power nor information as to the facts that are necessary to the statement and settlement of the account between the shareholders and said company respecting their liabilities for such assessment, nor has he any power to make such assessment under the deed of trust hereinafter mentioned, and the assistance of a court of equity is necessary for these purposes.

Orator further states that it was necessary at the beginning of the work for which said company was incorporated and organized to raise at least four hundred and fifty thousand dollars within a short period of time, with which to purchase lands containing coal and iron, and machinery to start up and conduct the works. To raise this sum of money it was also necessary to issue the bonds of
538 the company for four hundred thousand dollars, secured by a first mortgage upon the stock of the company that remained to be issued and that was still unpaid and upon all its property and upon the property it should afterwards acquire to secure said bonds and to authorize the sale of said bonds to the stockholders at the rate of ninety cents on their face value.

Said property and the stock in said company was then considered by the stockholders to be very valuable when it should be fully developed, but it had no credit in the money market of the country,

and so the sale of said loans could only be made to the stockholders, and the rate of 90 per cent. of their face value was, in fact, a very high price to pay for the same.

Accordingly, the stockholders of said company, and also the board of directors of said company, in regular meeting held by them, respectively authorized the issue of bonds of said company, secured by such a first mortgage, to such of the stockholders as should subscribe any pay for the same, at the rate of ninety cents on the dollar of their face value, in pursuance of the said resolutions of the
539 stockholders and the board of directors of said company. The bonds and the mortgage or deed of trust were made and issued which are described or set forth in the deed of September first, 1882, which is copied in "Exhibit A" to this bill of complaint. All of the said bonds were issued and sold to the stockholders, to the amount of four hundred and ninety-eight thousand dollars, at the rate of 90 per cent. of their face value, except two bonds that still remain in the treasury of the company, and the bonds so sold were all paid for in money by the purchasers at the time of their delivery to the purchasers, and the money went into the treasury of the said Brierfield Coal and Iron Company. It will be more fully stated hereafter in this bill of complaint who were the present holders of said bonds, so far as orators is informed and believes. To secure said bonds a deed of trust was executed and delivered by said Brierfield Coal and Iron Company to orator, as trustee, on the first day of September, 1882. A copy of said deed, setting forth a copy of said bonds, is found in said Exhibit A to this bill.

540 On the 29th day of July, 1887, the said Brierfield Coal & Iron Company made, executed, and delivered to orator, as such trustee, a deed of conveyance, a copy of which is made Exhibit "A" to this bill of complaint and is made a part thereof. Each of said deeds was made in pursuance of the powers conferred by law upon said corporation and in accordance with resolutions of a meeting of the stockholders thereof, and are duly recorded in the counties of Bibb, Shelby, and Chilton, where the property therein conveyed is situate. Orator duly accepted said conveyances and consented to act as trustee therein.

SECTION 2. The bonds described in the original deed of trust are dated the first day of October, 1882, as is recited in said deed, were sold to certain persons who are for the most part still the owners thereof.

The present owners of said bonds are, so far as orators is informed, as follows:

Thomas J. Peter has	45	bonds.
Carrie S. Plumb "	100	"
George I. Seney "	40	"
Justin S. Morrill "	11	"
John G. Murray "	1	"
Mrs. M. S. Pomeroy has	9	"
Esther A. Peter has	244	bonds.
Samuel Thomas has	27	"

C. S. Brice	has	3 bonds.
J. T. Fitzgerald	"	13 "
Robert L. McCally	has	5 "
		498
And two bonds in the treasury of the company		2
In all		500

541 The five bonds to Robert L. McCalley have not been delivered to him, but are held subject to a settlement to be made with him; some of said bonds owned by the persons above named have been hypothecated by the owners as security for certain debts of the company, as hereinafter stated, and *in* all of said bonds, whether held in absolute right or as a pledge, are a lien upon the property conveyed in said deed of trust to orator; but some of the property conveyed in said deed was acquired by said company subject to certain liens which are paramount to the lien of said deed of trust, and orator, as trustee in said deeds, is without the means to discharge said liens, and he is advised and believes and so states that he cannot, without the assistance of this honorable court, obtain the means from the net earnings of said property or upon its credits or by a sale of parts or parcels thereof to free said property from said incumbrances.

In June, 1883, said company purchased from W. D. & K. Carter, Junior, the land on which the iron furnace and some of the valuable ore beds are located, which constitute the chief reliance of
542 said company for its future success, and gave a mortgage to said vendors upon said land to secure the purchase-money thereof. A balance of $11,474.60 is claimed by said vendors on said debt, the first installment of which falls due in October, 1887. This balance is not disputed by said company as to the amount thereof, but an additional sum of $3,900.00, claimed by them, is disputed by said company. Whatever sum is equitably due thereon will be demanded at maturity, and if it is not paid the land will be sold under said mortgage. A sale of said property would practically destroy a great part of the value of said entire trust estate for the purposes of said company or for any purpose. The maint*ai*nance of the integrity of the entire plan of operations arranged by said company is, as orator is advised and so states, essential to its profitable conduct. Said company has been compelled also to obtain loans of money from banks to conduct its business, and has pledged to the Memphis National Bank of Tennessee 5,700 kegs of nails as collateral security for eleven thousand four hundred dollars bor-
543 rowed from said bank, which debt will fall due by installments beginning on the 8th day of October, 1887, and a like pledge of 5,000 kegs of nails has been m*a*de to the People's Saving-Bank of Mobile for the loan of ten thousand dollars to said company, which will fall due by installments on or after November first, 1887. The bills of lading for said lots of kegs of nails respectively were delivered to said banks respectively, and the nails have been

shipped and delivered to them and are subject to sale by them if said notes are not paid at maturity. Orator is informed and believes and so states that said nails are of greater value in the markets where they are stored than the sums of said debts respectively, and if anything is realized from the sale thereof over and above the amount of said debts the overplus will belong to orator, as trustee in said deeds of trust. There is also due to the laborers, miners, mechanics, and other employees of said Brierfield Coal and Iron Company of Alabama about the sum of ten thousand dollars on the pay-rolls of said company for work and labor performed by them in the conduct of the current business of working and operating the various industries in which said company is engaged.

544 A schedule of said indebtedness, so far as the same can now be ascertained, marked Exhibit "C," is attached to this bill for information and reference but not as an accurate statement of the sums due to such persons respectively after they shall have made a complete settlement with said company. Orator does not know that said statements are correct, but believes that the same are substantially correct, and they show an indebtedness of said company to its employees of about the sum of ten thousand dollars. As orator understands the provisions of said deed of trust to him as trustee, which is set forth in Exhibit "A" to this bill of complaint, he is authorized to pay the sums of money to said employees that are justly due them for work as a part of the current expenses of the trust, and that such debts are entitled to priority of payment in preference to the interest on the bonds, or the principal of said bonds, or the sinking fund provided in said deed of trust for the payment of said bonds; but as to this matter orator submits to the direction of this honorable court as to how he shall execute the trusts imposed upon him in said deed, as he does also in respect of all his duties in the premises. The available assets of the company turned over to orator as trustee are not sufficient by several thousand dollars for the payment of operations, laborers, and employees, and orator is compelled to borrow money for this purpose to save the property from danger.

545 In providing for the purchase of property, real and personal, for extending the works and enlarging the business of said Brierfield Coal and Iron Company and in conducting the current work of said company in accordance with its charter it has been necessary that your orator should become the security of said company for large sums of money borrowed from time to time from the banks. Orator is now liable as surety on certain bills of exchange, which were discounted by the Hanover National Bank of New York, for the sum of $27,500.00 *dollars*, which will fall due on August 11th, 1887, and on each month thereafter. The said money was borrowed exclusively for the use of said Brierfild Coal and Iron Company and was paid over to the agents of said company and used by said company in its current business, a large part of which was the purchase of real estate in Alabama for enlarging the area of coal-fields and forrests and iron-ore beds acquired by said company and needed for its successful development as a coal and iron company. Orator is

not prepared at this time to trace the application of said money, borrowed on his individual credit, to the particular real estate to the purchase of which it was applied by said company in whole or in part, but he charges that a large part of said money was so applied, and that he has a prior equitable right of
546 indemnity and satisfaction for any sum that he will have to pay upon said debts of said company; and he also charges that such lien is secured to him by the necessary construction of the rights and powers conferred upon him in said deed of trust, and he submits this matter also to the ruling and direction of this honorable court. Orator is informed and so states that one of the locomotive engines purchased by said company is still subject to the lien of the vendors, the Baldwin Locomotive Works of Philadelphia, to the extent of $1,092.57 *dollars*, which will fall due the 7th October, 1887.

Orator further states that there is an unpaid balance of purchase-money due to the State of Alabama for the purchase of section 16, township 22, of range 4, in Shelby county, in the State of Alabama, which balance, with interest on the same, amounts to about the sum of three thousand dollars, and also that a balance of about $533.33 *dollars* is claimed against said company by the estate of Burwell B. Lewis, deceased, late of Tuscaloosa, Alabama, but said balance is in dispute between said estate and said company.

Thomas J. Peter, a stockholder in said Brierfield Coal and Iron Company of Alabama, and the president of said company, who is, and has been since the date of its organization, the business
547 manager and agent thereof, has frequently borrowed money for said company that was needed to conduct its business, to pay for land and personal property purchased by it, and to pay for labor, coal, coke, iron, machinery, and other things that were needed to enable the company to conduct the business for which it was created; and said Thomas J. Peter is now the surety of said company to the City National Bank of Selma, Alabama, on its paper for the sum of fourteen thousand dollars, which will fall due on the 15th day of August, 1887, and in installments thereafter, & he has hypothecated with said bank 28 bonds of $1,000.00 each of said Brierfield Coal and Iron Company, secured by said deed of trust copied in Exhibit "A" to this bill, to secure said loan; and said Thomas J. Peter has in like manner become the surety of said company to the Commercial Bank of Selma, Ala., for the sum of twenty-two thousand five hundred dollars, for which he has in like manner hypothecated twenty-six of said bonds of $1,000.00 each, and said debts will fall due on the 18th day of August, 1887, and in installments *therefore;* and said Thomas J. Peter has in like manner become the surety of said company to the Alabama National Bank at Birmingham, Alabama, for the sum of eight thousand dollars, to fall due on the 16th day of
548 September, 1887, and by installments thereafter, and has, in like manner, hypothecated to said bank nine of said bonds of $1,000.00 each to secure said debts. All of the bonds so put in pledge by said Peter to said banks respectively are the individual property

of said Peter or his wife, Esther A. Peter. Said Peter claims that he is entitled in equity to be indemnified and reimbursed the money for which he is so liable, or that he has had to pay on account of said Brierfield Coal and Iron Company of Alabama, in preference to the holders of the bonds of said company who have not incurred such liabilities on its account. Orator submits this matter also to the ruling and direction of this honorable court. Orator has stated, as far as he is at present advised, the question in the nature of claims of priority of satisfaction out of the trust estate conveyed to them in said deed that are set up by the claimants and the facts, so far as he is advised, upon which said claims are founded, except as follows:

SECTION 3. John G. Murray is endorser on two notes of the Brierfield Coal and Iron Company to the Commercial Bank of Selma for two thousand five hundred dollars each, which mature respectively on September 13th and September 21st, 1887, and Thomas J. Peter is security on each of said notes, which were made and dis-
549 counted at said bank solely for the use and benefit of said company, and the money received by the company was borrowed for the purpose — paying certain notes to W. D. & K. Carter, Jr., given for the lands described in Exhibit "B" to this bill of complaint; and said Murray and said Peter claim that said money was in fact paid upon said notes, and they are entitled in equity to be su-stituted to the lien of said mortgage on said bonds for their indemnity or reimbursement.

SECTION 4. Orator further states, upon information that he believes to be correct, that the sum of money invested in the various works and properties of the Brierfield Coal and Iron Company of Alabama amounts in the aggregate to the sum of nine hundred thousand dollars, and the intrinsic value of the property, real and personal, now owned and possessed by said company exceeds one million dollars.

Up to this time the chief industries of said company *has* been the manufacturing of cut nails from iron. The overproduction in the United States of this description of nails and the competition with nails cut from steel has caused a constant and very considerable reduction in the market price of such nails and a consequent loss of money in their manufacture to *to* said company. Said company, with a view to change their industry from the manufacture of
550 nails to the production of pig-iron, has purchased large and valuable fields of coking coals and iron-ore beds and has erected coke ovens and railroads connecting their properties, and has just completed an iron furnace of about 50 tons capacity *per diem* to be run with coke fuel; all the facilities and appliances for washing ores and coal and the making of pig-iron are completed and all the material for iron production exist- in great abundance upon the property of said company and can be assembled at the furnace on an average haul of not exceeding three miles. Orator is fully satisfied, and so states his belief to be, that said property employed in the industries now established upon it, in coal, coke, and iron production and manufacture, will make money rapidly and will soon be able to clear off all debts that the company is owing.

But, for the causes stated, the unsecured debts of the company to persons who are not stockholders or bondholders run up to about the sum of two hundred thousand dollars; these debts are running rapidly to maturity, and said company has not the means or resources with which to pay them at maturity unless orator can borrow money on the credit of the trust fund sufficient to put its iron furnace and coal mines into active and effective operation.

551 Orator further states that he is convinced that a forced sale of the property included in the deed of trust to him would result in a loss of all that is due to the unsecured creditors and a large part of the money due on the bonds secured by said deed of trust.

SECTION 5. Orator further states that on the first day of August, 1887, he made a demand in writing upon the said Brierfield Coal and Iron Company for the surrender to him, as trustee, of the property of every description mentioned in the said deed of the first of September, 1882. Said demand is in the words following:

"To the Brierfield Coal & Iron Company of Brierfield, Alabama:

"Pursuant to the promises and obligations of a certain mortgage executed to me as trustee by you, bearing date September first, 1882, for the purpose of securing upon the property therein mentioned and described certain bonds amounting to the total sum of five hundred thousand dollars, and especially in pursuance of articles II and III, and because of the non-payment of the interest upon said bonds, and because of the non-payment of the sums required as a sinking fund by the terms of said mortgage, said default in the payment of interest and in the payment of sinking fund having both continued for a period of more than six months, I hereby demand possession

552 of all the property covered by said mortgage for the uses and purposes of the trust created thereby and in accordance with its terms, conditions, and limitations.

"Witness my hand this first day of August, 1887.

"PRESTON B. PLUMB, *Trustee.*"

Said demand was made, as will be seen on its examination, upon the ground that the interest on the bonds secured by the deed of trust to orator as trustee, dated September 1st, 1882, had been due and unpaid for more than six months prior to the said demand, and that no money had ever been paid to orator to be applied to the sinking fund provided for in said deed of trust, and orator avers that said statements are true. Orator further states that the credit of said company has become so far injured by the embarrassments attending the decline in the market price of nails and by the necessary expenditures to change its business to the production and sale of iron & coal that it is impossible for said company to continue its business without the sum of twenty-five thousand dollars can be borrowed on faith of its property; said property has been surrendered to him, but the inventories thereof have not been completed, but are in process of completion and will be filed in this cause.

Orator has appointed John G. Murray his general agent to hold, control, and manage said property; said Murray is entirely familiar

with said property and its management since it first went into
553 the possession of said company and is a trustworthy and skilful man in such business. The said company having failed to pay the interest on its bonds secured by the deed of trust to orator, and having failed to provide any sinking fund for the redemption of the bonds, as required in said deed of trust, orator was bound, as he is advised, to demand the possession of the trust property and to conduct, operate, and administer the same according to the requirements of said deed of trust. No creditor of said company secured by said — or otherwise has demanded or required of orator that he should proceed to a strict foreclosure of said deed of trust either by a sale of the property or by a bill in equity to foreclose the same. Orator states it as his belief, and believes that this opinion will be concurred in by all parties concerned in interest, that a sale of the property on foreclosure of the trust conveyance without a further effort to develop the property so that it will pay all the debts of the company would be ill-advised and necessarily hazardous to all concerned; but orator states that he will not be able without the active assistance of the court in allowing him to borrow money on the faith and credit of the property, supported and sustained by the decree of this honorable court, to render the property self-sustaining or to pay the laborers the sums that are due them or to realize
554 a sum sufficient to meet the interest on the bonds of the company or to pay any part of the unsecured debts of the company.

And if this honorable court shall deny to orator its assistance in so obtaining money to conduct the business of the company he will ask leave to amend this bill so as to bring before this honorable court the question whether he shall proceed to close the trust under a decree of foreclosure and sale.

Orator states that the property conveyed to him in trust is capable under proper management, and with its credit restored under the orders of the court, of meeting the current expenses of its management in the manner provided in said deed of trust, and of paying all its debts, and of yielding to the shareholders a substantial profit on their investment. Orator further states that he is advised and believes that it is necessary to his security in the administration of said trust estate under the third section of said deed and under its other provisions, and also to the secure and proper management of said property, that he should have the ruling and direction of this honorable court, and that it is also necessary that an account should be stated with each stockholder and each bondholder of said company to ascertain what sums of money such stockholders may owe said company, if any, and what sum of principal and interest is due each bondholder secured by said
555 deed of trust, and that they may receive from time to time such rateable and proper allowances on their debts as the court shall direct the trustee to pay over to them. It is also necessary, as orator is advised, that your orator should have the direction of the court in making sales of any lands, if such there are, as shall be found necessary to the proper and profitable conduct of the trust

estate; and to these ends, and for other purposes essential to the administration of the trust, and to prevent a forced sale of the trust estate while it is capable of living, made adequate to the payment of all its indebtedness, and to prevent unnecessary and vexatious litigation, orator states that it is necessary that this honorable court will take jurisdiction and control of said trust estate and of its management and administration, and to protect and preserve the same from time to time by such orders and decrees as may be found necessary and lawful.

To the end, therefore, that the said defendants may, if they can, show cause why orator should not have the relief hereinafter prayed, and may, upon their replication, knowledge, information, and belief, full, true, direct, and perfect answer make to the statements and averments of this bill of complaint, may it please your honor to grant unto orator writs of subpœna to be served to the Brierfield Coal and Iron Company, a corporation as aforesaid, whose principal
556 place of business is at Brierfield, in the county of Bibb, in the State of Alabama; Thomas J. Peter, who resides in said county of Bibb; Caswell C. Huckabee and J. T. Fitzgerald, both of whom reside in Perry county, Alabama; Rob't L. McCalley, who resides in the county of Calhoun, in Alabama; John G. Murray, who resides in Bibb county, Alabama; the City National Bank of Selma, Alabama, a corporation as aforesaid, having its place of business at the city of Selma, in Dallas county, Alabama; the Alabama National Bank, a corporation as aforesaid, located at Birmingham, Alabama; the Commercial Bank of Selma, a corporation as aforesaid, located at Selma, Alabama; Esther A. Peter, who resides at Brierfield, in Bibb county, Alabama; Edward T. Peter and Charles Bates, both of whom reside in Bibb county, Alabama; and that publication may be made as to Carrie S. Plumb, who resides at Emporia, in the State of Kansas; Justin S. Morrill, who resides at Strafford, in the State of Vermont; George I. Seney, Calvin S. Brice, and Samuel Thomas, each of whom resides in the city and State of New York, and Laura E. Williams, who resides at Cincinnati, in the State of Ohio, and M. S. Pomeroy, who resides at Washington, in the District of Columbia, commanding and requiring the said defendants and each of them to answer, plead, or demur to this bill of complaint within the time and in the manner prescribed by the rules of this court and as required by the note hereinafter written. Orator
557 further prays that if any of the creditors of said Brierfield Coal and Iron Company who are not made parties defendant to this bill, or any persons holding and asserting claims against the trust estate in the hands of orator, desire to have their rights determined in this honorable court that they be permitted to make themselves parties defendant in this cause on filing their petitions therein setting forth their said debts, demands, and claims, and that said matters shall be heard and determined in this cause. Orator further prays that an account be taken and stated between the said Brierfield Coal and Iron Company and each stockholder and bondholder thereof to show what sums, if any, are due and payable to each of them out of any moneys that may come into the hands of

orator derived from such trust property and subject to distribution; that orator may, from time to time, as the court shall direct, present his accounts of his administration of said trust estate, and that the same may be passed upon and decided by this honorable court, and that this honorable court will in all things protect said trust estate and direct your orator as to the administration of the same and the sale thereof, if a sale is found to be the best method of disposing of the property or any part thereof for the benefit of all concerned. Orator further prays that he may forthwith be authorized and directed by the order and decree of
558 your honor's court to borrow on the faith and security of said trust property the sum of twenty-five thousand dollars, to be applied by him as such trustee to the payment of the wages *and to* operatives & laborers and employees of said company and, so far as it will go, to the satisfaction of the preferred claims against said property falling due at an early date, as shown in this bill, and thus to avoid the sacrifice of said property or valuable portions thereof; and orator further prays that he may be authorized and directed by such order or decree of this court to issue certificates of indebtedness or other evidences of indebtedness in such sums and from and payable at such times as may be prescribed by such decree, and that said certificates of indebtedness or other evidences of indebtedness may, by the said order or decree, be made and constituted a prior lien on all of said trust property over and above all other liens now existing except taxes, the said certificates not to be sold or registered or hypothecated for less than their face value, and that this honorable court will grant to orator such *such* other or further general or special relief in the premises as to equity and good conscience may appear meet and proper.

PRESTON B. PLUMB, *Trustee*,
By JNO. T. MORGAN,
Counsel for Comp't.
THORINGTON & SMITH,
His Sol's.

JNO. T. MORGAN,
Counsel f. Conpl't.
THORINGTON & SMITH,
Sol's for Conpl't.

559 NOTE.—Each of said defendants is required to answer each and all of the averments contained in said bill *contained in said bill* from 1 to 5, both inclusive, upon their respective oaths.

JOHN T. MORGAN,
Counsel for Compl't.
THORINGTON & SMITH,
Sol's for Compl't.

THE STATE OF ALABAMA, }
Shelby County. }

This day came before me, French Nabors, a notary public in and for said county, John G. Murray, who, being by me duly sworn,

states on oath that he is the agent of the complainant, P. B. Plumb, and is informed as to the facts stated in the foregoing bill of complaint, and he states that the matters set forth in said bill when stated as of the knowledge of the complainant are true, and when stated as upon information and belief he believes the same to be true.

JOHN G. MURRAY.

Subscribed and sworn to before me this 2d day of August, 1887.

FRENCH NABORS,
Notary Public.

[SEAL.]

560 EXHIBIT B.

STATE OF ALABAMA, }
Bibb County. }

This indenture, made the ninth day of June, A. D. 1883, between the Brierfield Coal and Iron Company, a body corporate duly incorporated under the laws of Alabama, having its principal office at Brierfield, in said county and State, party of the first part, and William D. Carter and Kearsley Carter, Jr., parties of the second part:

Whereas the party of the first part has purchased from the Bibb Furnace Company and the parties of the second part certain personal property and the real estate hereafter described for the sum of ninety thousand dollars, and has paid on said purchase twenty-five thousand dollars, and still ow- thereon sixty-five thousand dollars; and whereas the party of the first part desire- to secure the payment of said last-mentioned sum of sixty-five thousand dollars, which is evidenced by its five promissory notes, all bearing even date with these presents, as follows: Two for twelve thousand and five hundred dollars each, payable at nine and fifteen months after date respectively, and three for thirteen thousand three hundred and thirty-three hundredths dollars each, payable at two, three, & four years after date respectively, all of said notes bearing interest at six per cent. per annum from date:

561 Now, therefore, this indenture witnesseth: That the said party of the first part, in consideration of the premises and in further consideration of the sum of one hundred dollars to it in hand paid by the parties of the second part, receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents doth grant, bargain, sell, mortgage, and convey, unto the parties of the second part the following-described real estate, all situate and lying in said county and State, and being the same purchased by the party of the first part from said Bibb Furnace Company and the parties of the second part, and which are described as follows, to wit:

The southeast quarter and the northeast quarter of the southwest quarter and the southwest quarter of the northwest quarter and the south half of the northeast quarter of section twenty-eight, all of sections twenty-six and twenty-seven, and the land lying south of the tram-road from the Brierfield Mills to Bibb Furnace, in the southeast

quarter of section twenty-three, the south half of section twenty-five, all of section thirty-*thirty*-three, all of section thirty-four except the northeast quarter of the southeast quarter thereof, the northwest quarter of section thirty-five except the *the* southwest quarter thereof,
562 the west half of the northeast quarter and the land that lies north of the grade of the Ashby and Bibb Furnace railroad in the northeast quarter of section thirty-five, and the southwest quarter of the southwest quarter of section thirty-five, all of the west half of the northwest quarter of section thirty six that lies north of the grade of the Ashby and Bibb Furnace railroad, and the west half of the southeast quarter of section thirty-six, all of the above-described lands being—township twenty-four north and range eleven east; and also the south half of the north half and the northeast quarter of the northeast quarter and the northeast quarter of the southwest quarter of section five; also the northeast quarter of section four; also all of section three except the southeast quarter of the northeast quarter and the north quarter of the southeast quarter of said section; also all of section two except the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter and the northeast quarter of the northeast quarter of said section; also the northeast quarter and the east half of the southeast quarter of section ten; also all of section eleven except the southeast quarter of the southwest quarter and the south half of the southwest quarter of said section; also the north-
563 west quarter of the southwest quarter of section twelve, all in township twenty-three north and range eleven east; also the following lands purchased by C. C. Huckabee from A. J. Day by deed bearing date October 16th, 1880, to wit: All of section one except the south half of the southwest quarter, townshis twenty-three north, range eleven east; als- the south half of the northeast quarter and the northeast quarter of the southeast quarter of section thirty-one; also the south half of the northwest quarter and the northwest quarter of the northeast quarter and the south half of the southwest quarter and the west half of the southeast quarter of section thirty-two, township twenty-four north, range twelve east; also the northwest quarter of the northwest quarter of section five, township twenty-three north, range twelve east, containing in the aggregate six thousand eight hundred and eighty acres, more or less, and being the same lands conveyed by C. C. Huckable to W. D. Carter and O. K. Sheppard, Jr., by deed bearing date January 10th, 1881, except eighty acres in sections two and three a-ove reserved; also the iron ore on the following-described lands conveyed by deed of J. N. Smith and C. C. Huckabee to W. D. Carter and O. K. Sheppard, Jr., bearing date January 7th, 1881, and more particularly described as follows, to wit: All of section twenty-two, and all lands owned by said Smith in section twenty-one, and the north
564 half of section twenty-eight, and the west half of the southwest half and the northwest quarter of section twenty-eight, and the west half of the southwest quarter of section twenty-eight, and the south half of the southwest quarter of section twenty-three, all in township twenty-four north, range eleven east, containing in the

aggregate sixteen hundred and forty acres, more or less; also the east half of the southwest quarter and the northwest quarter of the southwest quarter and the west half of the southeast quarter of section four, township twenty-three north, range eleven east; also the east half of the southwest quarter and the west half of the southeast quarter of section thirty, township twenty-four north, range twelve east, together with all any singular the building and improvements on said lands:

To have and to hold the same, with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, unto the said parties of the second part, their heirs and assigns forever; but it is expressly understood that only the timber right in the two hundred and forty acres of land in section five, township twenty-three north, and range eleven east is hereby conveyed.

But this indenture is made upon the following terms and conditions—that is to say: Of said five promissory notes herein-
565 above described shall be paid at or before maturity, at the election of the party of the first part, with all accrued interest thereon to the time of payment, then this conveyance shall become void and of no effect and shall be cancelled and discharged.

But if said debt shall not be paid when the last of said notes becomes due and payable, then the parties of the second part are hereby authorized to enter upon and take possession of all of said real estate, and, after giving notice by advertisement of the time and place of sale for sixty days previous to the date of sale in one newspaper published in Bibb county and in one published in Dallas county, may proceed to sell all of the real estate herein described at Brierfield, in Bibb county, for cash to the highest bidder, and with the proceeds of sale shall pay whatever balance may be due upon said notes, with interest thereon, and after paying the same and the expenses of said sale shall pay the surplus to the said party of the first part or its successors or legal representatives.

In testimony whereof the party of the first — has hereunto set its name and seal, by its president, Thomas J. Peter, and its secretary, John G. Murray, the day and year first above written.

[SEAL.] BRIERFIELD COAL & IRON COMPANY,
By T. J. PETER, *President.*

Attest: JNO. G. MURRAY, *Sec'y.*

Witness:
A. A. WILEY.
JOHN G. MURRAY.

566 THE STATE OF ALABAMA, }
Bibb County. }

I hereby certify that T. J. Peter, president of the Brierfield Coal and Iron Company, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same by signing the name of the Brierfield Coal and Iron Com-

pany, by T. J. Peter, pres't, voluntarily, on the day the same bears date.

Given under my hand & seal this the *the* 9th day of June, A. D. 1883.

GEO. B. HEAN,
N. P. & ex Off. J. P., Bibb Co.

EXHIBIT C.

T. H. Fallowfield	36	85	Gus. Barnett	6	00
Craig Selley	6	50	Chas. Bell	20	85
Wm. Benson	17	00	Wm. Rose	6	00
Alex. Woods	5	25	Adam Bell	7	35
Wat Thompson	16	75	Andy Cleveland	6	00
Frank Lee	6	00	John Burnet	6	25
Mat. Davidson	6	00	Tom Royston	6	60
Jim Royston	5	45	Alf. Moore	5	25
John Hardy	14	75	Chas. Wright	5	25
Will. Cattenham	5	40	Will. Roberson	5	25
Albert Thomas	5	20	John Parker	5	25
Jerry Miall	6	50	Isem Arnold	5	25
Wm. Hill	6	25	John Burnett	5	50
Henry Finley	6	50	Andrew Payne	5	50
567 Lewis Smith	21	10	George Porter	8	75
Gus. Pitts	6	00	Frank Lee	7	25
Tom Casbat	42	15	Tobe Branch	63	10
Anon Runelson	5	05	Israel Dukes	5	95
Frank Thomas	7	10	Bill Bell	20	95
Georg- Mabry	7	50	Gus. Cockson	5	50
Cawf. Echols	8	65	Bill Jones	7	65
Hugh McSweeney	11	25	Jack Smith	8	30
Bill Jones	8	40	M. H. Smith	11	65
Jack Smith	15	40	Tom Harrison	5	40
Hosey Thomas	6	60	D. B. Burnett	30	80
Nap. Bates	12	50	Frank Fashel	5	15
Andrew Thompson	6	10	O. S. Halcom	5	10
Jim Thomas	40	60	Virgie Hatsher	5	30
Jim Johnson	10	65	Frank Oliver	14	00
Ick Bates	10	75	Jim Lawley	5	50
Mack Hinton	20	70	Gus. Pitts	9	05
Bill Davis	8	10	Craig Sitley	9	05
Nels. Tysons	10	95	Lee Bland	6	10
Ab. King	12	50	Porter Craid	5	65
Wesley Street	13	95	Jesse Cutts	5	05
Mack Hinton	5	50	Mat. Clark	5	05
Bob Moreland	24	40	W. M. Moreland	8	60
Wesley Street	9	00	I. D. Hicks	5	55
Jack Smith	6	80	J. D. Ballew	5	20
Tom Royston	6	20	C. Cattenham	6	55
Jim Thompson	5	60	Jesse Smith	5	30
Ed. McMekin	5	50	Henry Cash	6	05

Shep. Williams		6 80	Elles Hall		5 05
W. J. Martin		25 00	Frank Oliver		12 45
John Walker		50 00	Tom Sparks		5 50
Will. Harris		10 70	Tom McMurray		5 45
	Wat Thompson	10 00	Bill Prentis		5 10
568	Tom Prestis	5 40	George Brown		6 20
	Chas. Gayner	5 05	Le Kieling		4 10
Geo. Lee		5 20	Craig Sidley		3 50
Hosea Smeelee		5 05	D. S. Singlecap		90 00
Jim Sylvester		8 20	L. N. Young		80 00
Andrew Jackson		7 45	Chas. Martin		25 00
Craig Silley		8 50	Jesse Smith		10 60
Jim Graham		5 75	Calvin Moseley		4 50
Lee Bland		5 45	Tom O'Rouke		7 00
Thos. McCalley		6 85	Young McCullum		23 00
Dan. Pitts		27 15	H. M. Alsberger		8 40
Geo. Butler		7 45	Dick Williams		4 30
Otto Moreland		9 10	Preston McGraw		3 90
Jim Baker		5 55	Gus. Fowler		28 05
Frank Smeelee		6 00	Chas. Powers		6 50
Joe Cleveland		6 75	August Pitts		8 50
Preston McGraw		13 40	Calvin Toby		6 00
Sid. Kellow		11 75	C. A. Moffett		100 00
Pete Randall		5 50	J. R. Sharp		14 00
Dave Anderson		5 75	James Davis		80 00
Dan. Carlton		5 20	Andy Cleveland		6 50
Andrew Payne		6 20	D. Johnson		16 25
Columbus Lee		5 45	Noah Wright		5 10
Ben. Winter		3 15	R. T. Hill		10 70
Rick Kellow		4 25	Roscoe Connor		3 10
C. C. Craw		21 25	Frank Scroggins		13 55
C. J. Day		8 15	C. S. Hill		10 05
Chas. Eckard		7 25	Carson Graham		10 00
Gus. Pitts		12 00	Sam. Underwood		10 55
Chas. Powers		4 80	Ick Cook		9 50
Jim Sylvester		3 50	J. C. Coates		9 50
Yancy Taylor		4 00	Bill McPherson		10 15
	Lewis Coates	7 75	Dave McCummon		10 35
569	George Moreland	25 00	Dan. Callahan		4 65
	Tom Moreland	4 60	William Owen		7 30
Joe Moreland		30 75	W. T. Smith		25 45
Will. Kellow		10 25	J. C. Callahan		39 45
Dan. Toler		8 00	C. S. Robinson		11 05
Adolphus Gay		100 00	Tom Slaughter		15 05
T. F. Lowry		40 50	James Knight		14 70
Mat. Fuller		10 75	Ed. Dyer		28 50
Mike Connell		4 25	Lege Whitehouse		8 35
Will. Davis		14 25	Amy Smith		9 85
Steve Parker		4 75	H. Knichbaum		4 70
Will. Wright		16 50	Chas. Edmonds		7 35
Henry Bailey		20 75	James Glossen		9 50

Gene Carlton	5 20
Miles Taylor	8 75
Will. Harrison	18 50
Jim Seston	18 25
Will. Cattenham	8 25
Henry Sinclair	12 25
Will. Sheppard	18 75
Davis Williams	4 50
Gilbert Snels	5 00
Arthur Weaver	20 85
Will. Weaver	3 80
Jasper Pennington	7 70
Dave Campbell	10 05
Jim Sharp	12 45
Jesse Toncy	35 15
Felix Rooney	21 40
Ed. Allender	10 55
Jas. Murphy	18 40
Joe Dunnagan	17 00
Wiley Sarge	33 55
570 John Brown	6 85
Brooks Brown	4 70
Ed. Mathews	4 65
John Williams	7 10
L. L. McIntosh	13 95
Wm. Bevin	95 60
L. L. Johnson	20 40
Jim McDowell	25 05
Geo. Leyer	85 00
Sam. McCartney	25 95
Jim McCartney	40 05
Chas. Childers	55 25
Frank Bessie	20 00
Lige Stamps	55 70
A. Childers	7 70
M. McDowell	25 75
J. W. Regan	30 75
A. Moss	45 65
A. Hatcher	13 15
Geo. Farquhr	150 00
C. C. L. Brown	100 00
A. L. Henson	222 60
Walter Campbell	150 00
M. L. Howell	150 00
T. J. Peter	2,000 00
John G. Murray	400 00
E. T. Peter	100 00
J. B. Jemison	50 00
Rob't Walker	25 75
J. M. Reese	20 00
Jack Avery	15 00
Tom Slaughter	5 90
Joe Hickory	60 55
H. Boseman	11 05
H. Knichbaum	35 90
Chas. Edmonds	50 70
Geo. Hill	30 70
James Glossen	15 30
Dave Campbell	7 10
R. H. Brown	75 00
Gus. Francis	5 00
T. C. Kenson	5 00
Reney Henson	5 00
U. L. Henson	5 00
H. L. Walsberger	30 30
Geo. Fuquin	10 10
C. W. Price	11 50
Tom Gowan	7 35
Abe Harris	4 70
Sol. Price	3 35
Cary Newman	4 20
H. Edmondson	29 00
Nath'l Clay	8 80
Wm. Caldwell	10 00
Newton Campbell	15 35
A. Strickland	34 25
L. R. Stone	12 00
Randle Deltre	5 00
Ick Campbell	14 35
Ick Holsenback	2 75
Lewis Coots	19 25
L. C. Pool	7 00
M. Farmer	1 25
Paul Small	4 10
Aulee Morrison	7 00
Pomp Latham	5 00
Andrew Fykes	8 25
Geo. Lee	10
John Braneley	4 00
Andrew Johnson	50
Pink. McCan	50
Geo. Jones	50
Jim Brown	50
Dave Brand	50
Lewis Lenier	50
J. G. Moore	14 50
Levy Lawley	6 60
" "	8 10
J. D. Fannington	20 00
John Keller	12 95
Geo. Jones	20
Ben. Green	13 25

C. L. Bates	100	00	Peter Jefferson	8	10
W. J. Hatcher	45	00	Alex. McDowell	6	00
			Pink. McCan	6	00
571 John Griffin	3	00	Geo. Lee	6	00
Andrew Johnson	5	20	Jim Brown	2	20
Paul Dexter		50	Dave Andrew	1	10
John Lansford	4	20	Reubin Read	4	40
Jim Asley	2	60	Geo. Keller	3	65
Mack Jefferson	1	00	Mayer Caldwell		20
Wm. Blacker	55	00	M. Smith	3	00
Adam Can	41	00	L. Lawley	1	25
Ick Lendsay	7	00	Jim Jones	9	25
Jas. Blacker	7	50	Pope Head	2	45
Tom Hulley	6	10	Jim Graham	4	75
Jake Richards	43	00	Lewis Osborn	1	10
Ick Woodcock	12	00	Tom Mayne	4	85
John Shannon	18	70	Geo. Rutherford	36	25
Jim Foucher	1	25	Spence Wilkins	1	40
Joe Fannington	1	25	Dan. McMullen	6	85
Waid Hayes	6	00	Mike Keys	36	35
Jerry Parker	1	00	John Volansky	2	00
Henry Wesley	4	60	A. Clamsley	1	25
Moreland Sharp	2	00	Henry Smith	10	30
Crawford Sharp	12	50	Geo. Lee	4	25
Bob Coates	3	10	J. T. Pool	3	75
Richard Johnson	5	65	Fayt Smith	21	25
Morgan Speage		75	Chas. Miller		50
Levy Lawley		25	Will. Benk	4	70
Frank Yeaseck	1	00	Marion Caldwell	3	30
Lit Peterson	11	00	E. Kellow	6	00
Gabe Randall	4	45	R. Speager	2	00
Dave Hunter		25	McClelen and Beck	37	40
Reubin Read		10	Spencer Cox	8	00
Dave Andrew	1	10	Sam. Watt	8	85
Jim Brown	4	25	Adam Winter	7	00
Joe Pinkney	3	05	Waid Hayes	10	80
572 Sam. Sanders	5	00	Newton and Green	6	85
Mischeli and Gilfoy	25	50	Jacob Raley	9	00
John Golansky	82	10	F. M. Cone	4	10
L. Hippolite	73	20	C. Carter	3	45
Morgot Morris	5	00	H. McMicken	3	00
Geo. Rutherford	13	00	W. Nabors	1	10
Beaw & Sparling	32	40	Wm. Davenport	3	00
H. Anderson		85	Ed. McMicken	1	10
John Volansky	7	50	Thomas Harrison	150	00
John Walker	27	00	Geo. Evans	35	65
Wm. Harris	2	50	J. W. Stamps	23	65
Geo. Ervin		75	Wm. Lusher	13	50
Ben. Winner	1	50	Henry Watson	15	70
John Burnitt		75	Shibs Henderson		40

Gus. Burnit	75
C. Bell	3 05
Geo. Andrews	3 75
Lou Groove	7 50
R. Speagner	1 35
M. Pasnick	16 95
J. Cougler	2 65
Geo. Blacker	17 60
H. Debardelebur	2 50
Wm. Evens	31 20
I. Woodcock	75
Frank Prentise	4 65
Lije Jackson	13 00
Sam. Sanders	18 75
Debardeleber and Sharp	1 00
Dave Smith	2 40
John Holley	2 00
James Sickles	12 00
Mongo Moris	43 75
573 Ed. Smith	1 75
J. King	1 10
Nels. Wheler	60
J. Lee	1 75
J. Goodwin	10
A. Farley	1 50
Abe Robeson	75
Sam. Read	1 25
Fate Tyus	1 30
Bob Wyn	1 00
J. Allen	1 00
Chas. O'Rooke	4 00
J. M. Tate	50
Tom Mitcher	80
G. Moore	1 00
Tom Howell	95
Tom Smith	30
Rich. Dillingham	3 85
Bob Smith	20
R. C. Veach	1 00
Harry Veach	75
Tom Foucher	260 93
W. Johnson	11 90
W. Benton	1 25
Chas. Abner	16 75
Hugh Wood	23 50
C. Good	21 00
M. Abner	3 75
R. Scott	11 00
C. Cooper	7 25
Tom Jones	6 50
John Parks	50
M. H. Lamb	32 55
Pete Washington	2 05
Wm. Bassey	6 35
Sam. Steele	4 30
Jonas Walker	1 05
Chas. Mitcham	50
Jesse Cartwright	3 85
Ples Smith	2 05
Ed. Weaver	1 70
Geo. Nixon	1 95
Lucky King	8 75
Nets Gardner	1 00
A. White	95
Smith Reuben	90
Ernest Tate	3 75
Sherman Carnickle	10
Bob Barnitt	2 85
Lije Goodson	15
Parnel Walker	15 50
Cole Sharp	18 25
Dave Bennet	1 00
Flem. Wood	21 25
Dan. Carlton	75
Tom Fuller	8 25
John Howell	16 50
Jim Lee	1 75
Joe Elliot	4 25
Henry McMurray	50
A. McMurray	50
A. Conley	11 00
J. De Jarnet	7 25
Jim Swedman	50
E. Jeardan	15 50
Wm. Cluck	3 00
E. Moore	11 75
C. McGee	75
M. Thompson	75
Mose Robeson	75
Alf. Gail	75
Lee Thomas	8 50
Ed. Polk	18 25
Shelby Connel	6 00
R. Winn	75
B. Scott	15 00
Payton Porter	15 00
Turner Hudson	75
P. Martin	14 75
F. Warren	75
J. Suttle	1 00

C. Scott		11 95
	Jim McMurray	75
574	Jeff. Banks	20 00
	Lee Herald	13 50
Osborn Smith		13 50
J. Benton		05
J. Mabry		16 00
Lewis Dugland		17 25
F. Mabry		65
Armstead Adams		8 50
Payton Jones		2 00
Gus. Moore		10 25
Walter Sawyer		4 75
Dave Collier		7 25
L. "		6 25
Henry Perry		1 00
Ick Toney		1 00
Joe Sheppard		9 00
E. "		7 85
Tom Clay		9 75
Bob Woods		80
W. Washington		10 25
Jim Perry		75
L. Bent		12 75
Henry Smelley		1 00
Tom Coker		5 75
R. Young		75
J. W. Hardin		50
Jesse Coates		20
A. Coker		1 75
Joe Suttle		1 80
Henry Farington		50
Jack Cleveland		1 00
Joe Anderson		20 20
John Craxton		5 25
C. Cottenham		30
Geo. Bradley		1 50
Dick Dellengham		6 80
John Arnold		5 10
Tom Davis		1 25
Alex. Cone		3 85
I. Teney		75
R. Woods		2 25
G. Woods		75
Hudson King		15 75
E. Clark		85
Frank Arnold		2 00
Fill. Mabry		12 65
Taylor Terry		10 00
S. Terry		45
Jas. Ward		45
Jis. Espy		9 45
C. Morgan		90
J. Kaly		43 50
F. Mooreland		2 60
Wm. Davenport		16 10
J. R. Sharp		16 10
Chas. Carlton		8 00
Wess. Nabors		2 50
7		125 00

Original bill filed the 3d day of August, 1887, at 11 a. m.
J. W. DIMMICK, *Clerk.*

575 *Amendment to Bill.*

In the Circuit Court of the United States for the Middle District of Alabama.

PRESTON B. PLUMB, Trustee,
vs.
THE BRIERFIELD COAL AND IRON COMPANY *et als.* } In Equity. 103.

Comes the complainants in this cause, none of the defendants having appeared or answered, and amends his bill by averring that

Exhibit A referred to in the original bill was not in complainant's possession at the time said bill was filed, and he now *alters* the same hereto as part of the bill in this cause. Orator prays for all relief asked in the original bill and for general relief, and as in duty bound will ever pray, &c.

PRESTON B. PLUMB,
Trustee, Complainant,
By JOHN T. MORGAN,
Counsel for Compl't.
THORINGTON & SMITH,
Sol's for Compl't.

JOHN T. MORGAN,
Counsel for Compl't.
THORINGTON & SMITH,
Sol's for Compl't.

EXHIBIT "A."

STATE OF ALABAMA, }
Bibb County. }

Whereas, on the first day of September, A. D. 1882, the Brierfield Coal and Iron Company of Alabama, party of the first part,
576 made a deed of conveyance to Preston B. Plumb, of Emporia, in the State of Kansas, party of the second part, which deed, with the lawful acknowledgements of its execution thereon endorsed and the certificates of its registration thereon, is in the words and figures following, to wit:

This indenture, made this first day of September, A. D. 1882, between the Brierfield Coal and Iron Company of Alabama, a corporation created and organized under the laws of the State of Alabama, party of the first part, and Preston B. Plumb, of Emporia, in the State of Kansas, party of the second part, witnesseth:

That the said party of the first part has resolved to execute, issue, and dispose of its bonds to the amount of five hundred thousand dollars, secured by mortgage upon all property now owned by it or to be hereafter acquired, for the purpose of enabling it to pay for the property now held by it and to obtain means with which to transact and carry on its business, all of which bonds bear date the first day of October, A. D. 1882, and become due thirty years from their date, and are of like tenor and in the form following:

The Brierfield Coal and Iron Company of Alabama.

No. —. $1,000.

First-Mortgage and Sinking-Fund Gold Bonds.

Limited to $500,000.

Know all men by these presents that the Brierfield Coal and Iron Company of Alabama, a corporation created and organized under

577 the laws of the State of Alabama, hereby acknowledges itself to owe Preston B. Plumb, trustee, or bearer, the sum of one thousand dollars in gold coin, at par, of the United States of America, to be paid at the office of the company in Brierfield, Bibb county, State of Alabama, or at the office of said company in the city of New York, State of New York, on the first day of October, A. D. 1912, with interest on said sum from and after the date hereof, at the rate of six per cent. per annum, in gold coin as aforesaid, payable at said offices on the first days of April and October of each year, until the said principal shall be fully paid, on the presentation and surrender of the annexed coupons as they respectively become due. Said coupons shall be payable to the bearer thereof, whether the bond is registered or not. This bond is one of a series limited to and aggregating the sum of five hundred thousand dollars, and is secured by a deed of trust or first mortgage, bearing date Sept. 1st, 1882, duly executed and delivered by the said The Brierfield Coal and Iron Company of Alabama to the said Preston B. Plumb, trustee, of all the property now owned by the said company or that may hereafter be acquired by it in the State of Alabama, and is embraced in the sinking-fund provisions therein contained and subject to them.

This bond shall pass by delivery unless registered, or, if registered, by transfer on the books of the company, at its office in Brierfield, Bibb county, in the State of Alabama, or at any other place which the company may determine.

578 After a registration of ownership, certified herein by the transfer agent of the company, no transfer, except upon the books of the company, shall be valid unless the last transfer be to bearer, which *which* shall restore transferability by delivery, but this bond shall continue subject to successive registration and transfers to bearer as aforesaid at the option of each holder. This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon and duly signed by the said trustee.

In witness whereof the said company has caused its seal to be hereto affixed and these presents *and these presents* to be signed by its president and attested by its secretary on the first day of October, A. D. 1882.

[SEAL.] THE BRIERFIELD COAL AND IRON COMPANY OF ALABAMA,

By —— ——, *President.*

Attest: —— ——, *Secretary.*

Now, therefore, this indenture witnesseth: That said party of the first part, in consideration of the premises and the sum of one dollar to it in hand duly paid at or before the ensealing and delivery of the presents, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid issued or to be issued as herein recited and provided and every part of the said principal and interest as the same shall become payable, according to the tenor of said bonds and of the con-

pons thereto annexed, hath granted, bargained, sold, and conveyed and transferred, and does by these presents grant, bargain, sell, convey, and transfer, unto the said party of the second part, trustee
579 as aforesaid, his heirs and assigns, all the real and personal property now owned by said company situate in the State of Alabama, and all the real and personal property that may be hereafter acquired and owned by said company, wherein the same may be situate, together with all the franchises, tolls, incomes, rents, issues, and profits of said company, and all the estate, right, title, interest, and property, possession, claimed, and demanded whatsoever, as well in law as in equity, of the said party of the first part in and to the same and any and every part thereof, with the appurtenances thereto belonging; to have and to hold the same unto the said party of the second part, his successors, heirs, executors, administrators, and assigns, to his and their own use, benefit, and behoof forever, in trust, nevertheless, and to and for the uses and interests and purposes hereinafter limited, described, and declared—that is to say:

First. Until default shall be made in the payment of the principal or interest of the said bonds or some of them, or until default shall be made in respect to something by these presents required to be done, observed, performed, or kept by the *by the* party of the first part, the said party of the first part shall be suffered and permitted to possess, manage, operate, and enjoy all the property and the tolls, incomes, rents, profits, and appurtenances thereof hereinbefore conveyed; to mine, dig, excavate, and remove the coal & iron ore underlying its real estate and every part thereof and sell the same
580 in the same manner and with the same effect as if his deed had not been made, except as hereinafter provided.

Second. It shall be the duty of the party of the first part, in addition to providing for and paying the interest on said bonds, to provide for and pay into the hands of said trustee as sinking fund the sum of eight thousand dollars on the first day of October each and every year, beginning with the year 1884, until said bonds and the interest thereof shall be fully paid or until said bonds shall all have been purchased or drawn for said sinking fund, as hereinafter provided.

All sums of money paid into the hands of said trustee for such sinking fund and all its accumulations from whatever source derived shall be invested in the purchase of the bonds issued pursuant to this deed of trust at as low a price as the said trustee can obtain them for, by advertising for bids once a year in the market of the city of New York or by buying them at private sale, if he can do so more cheaply, even after he has advertised for bids; but the said trustee shall in no case pay more than ten per cent. premium on the face of said bonds and accrued interest, and if the same cannot be obtained for such price the said trustee is to invest all moneys in his hands above what is required for a reasonable compensation for his services by depositing it in a trust company.

All bonds issued pursuant to this deed which may be pur-
581 chased by the trustee shall be held as an investment of said sinking fund and shall be stamped as belonging to said fund, and shall thereafter not be negotiable.

Third. In case default shall be made in the payment of any interest on any of the aforesaid bonds issued pursuant to this deed, or in case the party of the first part shall fail to pay to said trustee each year for the sinking fund the sum hereinbefore provided for or shall fail to do or keep any requirement to be done or kep- by the party of the first part, and in case such default shall continue for the period of six months it shall be lawful for the said trustee or his successor to enter into or upon all and singular the property and premises hereby conveyed and each and every part thereof, and to have, hold, and use the same, operating, by his superintendants, managers, receiver, servants, attorneys, or agents, the business of said party of the first part, and to continue the conduct thereof; to make from time to time all repairs, additions, improvements, alterations, and outlays as may seem to said trustee judicious or necessary; to collect and receive all tolls, freights, incomes, rents, issues, and profits of the same and every part thereof, and, after deducting the expenses of operating and conducting the business of said party of the first part and the cost of all said repairs, additions, improvements, alterations, and outlays, and all payments which may be made for taxes, assessments, charges, or liens prior to the liens cre-
582 ated hereby on said property and premises or any part thereof, and a reasonable compensation for his own services, to apply the moneys arising as aforesaid to the payment of the interest upon said bonds in the order in which such interest shall have become or shall become due ratably to the persons holding the coupons evidencing the right to such interest, and after paying all interest which shall have become due to apply the same to the satisfaction of the principal of said bonds which may at that time be unpaid ratably and without distinction or preference.

Fourth. In case default shall be made as aforesaid and shall continue as aforesaid, or in case default shall be made in the payment of the principal of any of said bonds or any part thereof, and such default shall continue for the period of six months as aforesaid, it shall likewise be lawful for the said trustee or his successor, after entry as aforesaid, to sell and dispose of all and singular the property and premises hereby conveyed at public auction, either in the city of Montgomery, Alabama, or at such place within the State of Alabama as he may designate and at such time as he may appoint, having first given notice of the time and place of such sale by —, to be published not less than three times a week for six weeks in one or more newspapers in the city of Montgomery, Alabama, and the city of New York respectively, and to adjourn the said sale
583 from time to time in his discretion, and if so adjourning to make the same at the time and place to which the same may be so adjourned, and upon such sale to make and deliver to the purchaser or purchasers of the property sold good and sufficient deed or deeds in law for the same, which sale made as aforesaid shall be a perpetual bar, both in law and equity, against the party of the first part and all the persons whomsoever lawfully claiming or to claim said property and premises or any part thereof by, from, through, or under it, and, after deducting from the proceeds of such sale just

allowance for all expenses of such sale, including attorneys' and counsel fees and all other expenses, advances, or liabilities which may have been made or incurred by the said trustee in operating or conducting the business of the party of the first part while in possession and all payments — may have been made by him for taxes or assessments on said premises or any part thereof, as well as reasonable compensation for his own services, to apply the balance of the payment to the principal of such of said bonds as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall have at that time accrued on the said principal and be unpaid without discrimination or preference ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest, and if, after satisfaction thereof, a surplus of the proceeds shall remain
584 to pay over the same to the said party of the first part or to whomsoever may be lawfully or equitably entitled to receive the same, and it is hereby declared that the receipt of the trustee shall be a sufficient discharge to the purchaser or purchasers of the premises for their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, administrators, or assigns, shall not, after payment thereof and having such receipt, be liable to see to its being applied upon or for the trusts and purposes of these presents or in any manner whatsoever be answerable for any loss, misapplication, or non-application of such purchase-money or any part thereof or be obliged to inquire into the necessity, expediency or authority of or for any such sake.

Fifth. In case default shall be made in the payment of any half year's interest on any of the aforesaid bonds in the time and in the manner specified in the coupons issued therewith, provided the said coupons have been presented and the payment of the interest therein specified has been demanded, and in case such default shall continue for six months after the said coupons shall have become due and payable, then and thereupon the principal of all the bonds secured hereby shall at the election of the trustee become immediately due and payable, anything contained in said bonds or herein to the contrary notwithstanding, but a majority in the interest of the holders of said bonds may, by an instrument in writing signed by such majority before the interest and arrears shall be paid,
585 instruct said trustee to declare the said principal to be due or to waive the right so to declare on such terms and conditions as such majority shall deem proper, or may annul or reverse the election of the trustee, provided no action of the trustee or bondholders shall extend to or be taken to affect any subsequent default or to impair the rights resulting therefrom.

Sixth. The party of the first part shall from time to time and at all times and as often as thereunto required by such trustee execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in the law for the better assuring to said trustee upon the trusts herein expressed the said property and premises and every part thereof hereinbefore conveyed or intended so to be conveyed and all property and franchises now held or hereafter ac-

quired as by said trustee or by his counsel learned in the law shall be reasonably advised, devised, or required.

Seventh. The trustee shall have full power, in his discretion, upon the written request of the party of the first part, to sell, convey, and exchange any of the property hereinabove conveyed or intended*ed* to be conveyed which may be proper or necessary to be sold or conveyed or exchanged in the operation or conduct of the business of the party of the first part and which may become necessary in the transaction of the business of said party of the first part; and it shall be the duty of the party of the first part to sell and dispose of any property that may be unnecessary
586 for the transaction of its business and which can be sold without loss and at a fair price, and to make, acknowledge, and deliver proper conveyances to carry the same into effect, but any land which may be acquired or exchanged for any of the property herein conveyed or intended to be conveyed shall inure to and be covered by this deed, as after-acquired property hereinbefore designated, and all moneys arising from sales of any of the property herein conveyed or intended to be conveyed shall be paid to the trustee, and shall constitute a part of the sinking fund hereinbefore mentioned, until such time as the said sinking fund shall with its accumulations from whatsoever source equal the par value of said bonds and ten per cent. added thereto and accrued interest thereon, after which the proceeds of all said sale shall be retained by the party of the first part.

Eighth. If the party of the first part shall well and truly pay the principal of said bonds and every one of them and all interest thereon when the same shall become due and payable according to the terms of said bonds and the coupons issued therewith, and shall truly observe, perform, and keep all and singular the several things herein required by it to be performed and kept according to the true intent and meaning of this deed, then and in that case all the estate, right, title, and interest of the said trustee, party of the second part, and of his successor in the trust hereby created shall
587 cease, determine, and become void; otherwise the same shall be and remain in full force and virtue.

Ninth. It is hereby declared and agreed that it shall be the duty of the trustee to execute the power of entry or the power of sale hereby granted, or both, or to take appropriate proceedings in equity or at law, or both, to enforce the rights of the bondholders under this deed upon the requisition in writing—that is to say, if the default be as to interest, sinking fund, or principal of said bonds such requisition upon the said trustee shall be by holders of not less than a majority in amount of said bonds, and upon such requisition and proper indemnification by the persons making the same to said trustee against all costs and expenses to be by him incurred it shall be the duty of said trustee to enforce the rights of all the bondholders under this deed by entry, sale, or legal proceeding as he shall deem most expedient for the interest of all the holders of said bonds. If the default shall be in the omission to comply with any *any* other provision herein contained

to be performed or kept by said party of the first part, then and in such case the requisition shall be as aforesaid, but it shall be within the discretion of said trustee to inforce or waive the rights of the bondholders by reason of such default, subject to the power hereby declared of a majority in interest of the holders of said bonds by requisition in writing, signed by such majority, to instruct
588 said trustee to waive such default, or upon a *dequalt* indemnity as aforesaid to enforce their rights by reason thereof, provided that no action of said trustee or bondholders or both in waiving such default or otherwise shall extend to or be taken to effect any subsequent default or to impair the rights resulting therefrom.

Tenth. The party of the first part agrees that in case of a sale of said property under judicial proceedings to foreclose the same the same may be sold as an entire *peice* of property or in separate *peices* or parcels, as the said trustee may, in his discretion, determine.

Eleventh. It is mutually agreed by and between the parties hereto that in case the trustee herein appointed or any successor of said trustee shall die, resign, or be removed a successor may be appointed by the party of the first part, subject to the approval of a majority of the bondholders, who shall be notified, by a printed notice published ten consecutive days in a newspaper in the city of New York, to meet for the purpose of signing their choice, and in case they do not disapprove of the appointment of the party of the first part within one month after such notice shall have been first published the trustee so appointed shall be authorized to act under this agreement. If a majority of the bondholders disapprove and so notify the party of the first part, then the party of the first part shall
589 nominate some other person to be trustee, subject to the approval of the majority of the bondholders, as aforesaid, and so on until a trustee shall be appointed to the satisfaction of a majority: Provided, nevertheless, and it is so hereby declared and agreed, that in case it shall at any time hereafter prove impracticable, after reasonable exertions, to appoint a successor in the manner hereinbefore provided application in behalf of all the holders of the bonds secured hereby may be made by holders of a majority in account of said bonds to any circuit court of the United States or to any other court of competent jurisdiction for any judicial district in which said property or any part thereof may be situate for the appointment of a new trustee.

In witness whereof the said party of the first part hath hereunto caused its corporate seal to be affixed and these presents to be signed by its president and attested by its secretary; and the said party of the second part, trustee as aforesaid, has also hereunto set his hand and seal the day and year first above written.

THE BRIERFIELD COAL AND IRON COMPANY OF ALABAMA,

[SEAL.] By T. J. PETER, *President.*

Attest: JOHN G. MURRAY, *Secretary.*

P. B. PLUMB, *Trustee.* [SEAL.]

STATE OE ALABAMA, }
Bibb County. }

I, Jesse W. Mahon, a justice of the peace in and for said county, hereby certify that T. J. Peter, whose name is signed to the foregoing conveyance and who is known to me, acknowledge- be-
590 fore me on this day that, being informed of the contents of the above conveyance, he executed the same voluntarily and by authority of the said Brierfield Coal and Iron Company on the day the same bears date.

Given under my hand this 27th day of September, A. D. 1882.

JESSE W. MAHON,
Justice of the Peace.

STATE OF KANSAS, }
County of Lyon. }

I, J. G. Traylor, clerk of the district court of the county of Lyon and State of Kansas, hereby certify that P. B. Plumb, whose name is signed to the foregoing conveyance as trustee and who is known to me, acknowledged before me on this day that, being informed of the contents of the above conveyance, he executed the same and accepted said trust voluntarily on the day the same bears date.

Given under my hand and the seal of said district court for the county of Lyon this the 28th day of October, A. D. 1882.

[SEAL.]

J. G. TRAYLOR,
Clerk District Court.

THE STATE OF ALABAMA, }
Bibb County. }

I hereby certify that this conveyance was filed in my office to record on the 6th day of November, 1882, at — o'clock a. m., and duly recorded in volume S, Deeds, pages 326 to 336, on the 8th day of November, 1882.

JNO. S. GARDNER,
Judge of Probate.

591 I hereby certify that the conveyance was filed in the probate office, Shelby county, Alabama, for record July 20th, 1887, and recorded in Mortgage Book No. 19, on page 19.

JAMES T. LEPER,
Judge of Probate.

THE STATE OF ALABAMA, }
Chilton. }

I hereby certify that the within conveyance was filed in my office for record on the 23 day of July, 1887, and recorded in Book 18, page 99.

Given under my hand this 23d day of July, 1887.

H. J. CALLIN,
Judge of Probate.

And whereas in the sixth section of said deed of conveyance it is agreed and provided as follows, namely: "The party of the first part shall from time to time and at all times hereafter, and as often as thereunto requested by such trustee, execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in law for the better assuring to said trustee, upon the trusts herein expressed, the said property and premises and every part thereof hereinbefore conveyed or intended to be conveyed, and all property and franchises now held or hereafter acquired, as by said trustee or by his counsel learned in the law shall be reasonably advised, devised, or required;"

And whereas the said Preston B. Plumb, on the 25th day
592 of July, 1887, made the following request in writing for a further conveyance and assurance respecting said property, to wit:

To the Brierfield Coal and Iron Company of Brierfield, Alabama:

Pursuant to the promises and obligation of a certain indenture of mortgage made and executed by you to the undersigned as trustee, bearing date September first, 1882, for the purpose of securing upon the property therein mentioned and described certain bonds, amounting to the total sum of five hundred thousand dollars, I hereby request you to execute, acknowledge, and deliver to me, as trustee as aforesaid, a further mortgage or other proper conveyance, whereby you shall convey to me, as trustee as aforesaid and for the uses and purposes of the trustee in said first-mentioned instrument set out, all property, both real and personal, by you acquired sin- the date of said first-mentioned mortgage, and that you will also in said mortgage or other conveyance accurately and fully set out and describe by numbers, meet-s and bounds, location, or otherwise all the lands which at the said last-mentioned date were owned by you and which were covered by or designed to be covered by said first-mentioned mortgage, and which property was made the basis of said mortgage and was actually pledged for the security of the bonds therein mentioned, and also all personal property now owned by you which was so owned at the date of said mortgage, and also all franchises held at said date or hereafter acquired, and also to
593 execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in law for the better assurance to me as such trustee, upon the trusts expressed in said mortgage, the property and premises herein conveyed or intended to be so conveyed, and all property and franchises then held or thereafter acquired, and generally to do and perform such acts and things as shall make subject to the assurance and payment of said bonds of five hundred thousand dollars all the property, both real and personal, now owned by you.

Witness my hand this 25 day of July, 1887.

PRESTON B. PLUMB, *Trustee.*

And whereas the said Brierfield Coal and Iron Company of Brierfield, Alabama, since the ensealing and delivery of said deed as

above set forth, has, in accordance with the provisions thereof, acquired certain personal and real estate and properties and easements, privile*d*ges, and appurt-ances, which are subject to all the trusts and agreements and covenants in said deed expressed, and are included in said conveyance, but are not therein specifically described:

Now the said Brierfield Coal and Iron Company, for the purpose of complying with and executing the agreement and covenant in the sixth section of said deed contained, in accordance with the demand of Preston B. Plumb, trustee, and in consideration of the premises, doth by these presents further assure and convey and further and more specifically describe the real estate in said deed included and conveyed to Preston B. Plumb, the party of the second part, as the same is more fully designated and described as follows, to wit:

594 The following-described real estate in Bibb county, State of Alabama, and situate in township twenty-two (22) south, range five (5) west: The southwest quarter (¼) of the southwest quarter of section twelve (12), and the northeast quarter (¼) of the northeast quarter (¼) and the southwest quarter (¼) of the northeast quarter (¼) of section fourteen (14); and the following real estate in township twenty-four (24) north, range eleven (11) east, namely: The southeast quarter (¼) and the east half (½) of the southwest quarter (¼) and the southwest quarter (¼) of the southwest quarter (¼) of section four (4), and the south half (½) of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the southwest quarter (¼) of section five (5), and the west half (½) of the northeast quarter (¼) and the north half (½) of the southeast quarter (¼) of section six (6), and the east half (½) of the northeast quarter (¼) of section eight (8), and the west half (½) of the northwest quarter (¼) of section nine (9), and the following lands: The southeast quarter (¼) and the southeast quarter (¼) of the southwest quarter of section twenty-four (24), and the northeast quarter (¼) and the south half (½) of section twenty-five and the whole of section twenty-six (26), and the whole of section twenty-seven (27), and the southeast quarter (¼), and the northeast quarter (¼) of the southwest quarter (¼), and the southeast quarter of the northwest quarter (¼), and the south half of the northeast quarter (¼) of section twenty-eight (28), and all of the lands lying south of the tram-road, in the southeast quarter (¼) of section twenty-three (23), and the whole of section thirty-three (33), and the whole of section thirty-four (34), except the northeast quarter (¼) of the southeast quarter (¼), and the northwest quarter (¼) of section thirty-five (35), except the southwest quarter (¼) thereof, and

595 the west half (½) of the northeast quarter (¼), and the land lying north of the grade of the Ashby and Bibb Furnace railroad in the northeast quarter of section thirty-five (35), and also the southwest quarter (¼) of the southwest quarter (¼) of section thirty-five (35), and all of the west half (½) of the northwest quarter of section thirty-six (36) that lies north of the grade of the Ashby and Bibb Furnace railroad, and the west

half of the southeast quarter of section thirty-six (36); also all the iron ore and the mining rights to the following lands: All of section twenty-two (22), and all lands owned by estate of J. N. Smith in section twenty-one (21) and the north half of section twenty-eight (28) and the west half of the southwest quarter (¼) of section twenty-eight (28), and the south half of southwest quarter (¼) of section twenty-three (23); and the following lands in township twenty-three (23) north, range eleven (11) east, namely: All of section one (1) except the south half of the southwest quarter (¼) and all of section two (2) except the southwest quarter (¼) of the northwest quarter (¼) and the northwest quarter (¼) of the southwest quarter (¼) and except the northeast quarter (¼) of the northeast quarter (¼) of said section two (2), and all of section three (3) except the southeast quarter (¼) of the northeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) of said section three (3), and the northeast quarter (¼) and the east half (½) of the southwest quarter (¼) and the northwest quarter (¼) of the southwest quarter (¼) and the west half (½) of the southeast quarter (¼) of section four (4), and the south half (½) of the north half (½) and the northeast quarter (¼) of the northeast quarter (¼) and the
596 northeast quarter (¼) of the southwest quarter (¼) of section five (5) and the northeast quarter (¼) and the east half (½) of the southeast quarter (¼) of section ten (10), and the whole of section eleven (11) except the southeast (¼) and the south half (½) of the southeast quarter (¼) of said section eleven (11), and the northwest quarter (¼) of the southwest quarter (¼) of section twelve (12); also the northwest quarter (¼) of the northwest quarter (¼) of section five (5), in township twenty-three (23) north, range twelve (12) east; also the following lands in township twenty-four north, range twelve (12) east, namely: The southwest quarter (¼) of the southwest quarter (¼) and the northwest quarter (¼) of the southwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) of section (19) nineteen, and all that portion of the west half (½) of the southeast quarter (¼) of section nineteen (19) lying north and west of the East Tennessee, Virginia and Georgia railroad; also the following tract: Commencing at the middle of section nineteen (19) on the south boundary line of said section, thence east on said section line to Mahon's Ford road; thence north to the centre of Mahon's creek; thence down said creek to the middle line of section nineteen (19), running north and south; thence south to the point of beginning; also the following tract of land: The southeast quarter (¼) of the northeast quarter (¼) and that portion of the southwest quarter (¼) of the northeast quarter (¼) that lies east of the East Tennessee, Virginia & Georgia railroad, in section nineteen (19), and the north half (½) of the northeast quarter (¼), and twenty-five (25) acres going west of the East Tennessee,
597 Virginia & Georgia railroad, in the southwest quarter (¼) of the northeast quarter (¼) and the east half (½) of the southwest quarter (¼), except two and twenty-three hundredths ($2\frac{23}{100}$) acres on the east side of Mahon's creek and south of the line commencing in the south line of the northwest quarter (¼) at a point

four and fifty one-hundredths chains west of the south-southeast corner of said quarter section, and thence running north seventy-one (71°) degrees west magnetic bearing to Mahon's creek; also the following tract in the northeast quarter (¼) of the southwest quarter (¼): Commencing at the northeast corner of said southwest quarter (¼), thence (80) eighty rods south to the southeast corner of the northeast quarter (¼) of the southwest quarter (¼), thence west ten and fifty-hundredths chains, thence north eleven and one-half degrees east magnetic bearing to the north line of the quarter section, thence east on said line four and fifty-hundredths chains to first point, containing fifteen (15) acres; also two and one-half (2½) acres in the southwest corner of the northeast quarter (¼) of the southwest quarter (¼), which lies south of the old tram-road; also the following tract: Commencing at the southwest corner of the northeast quarter (¼) of the southwest quarter (¼), thence running east along the south side of said forty-acre tract six hundred and twenty-four (624) feet, thence north fourteen degrees and twenty minutes (14° 20′) east magnetic bearing one hundred and thirty-four (134) feet, thence north twelve degrees east (12°) magnetic bearing four hundred and twenty-six (426) feet, thence south fifty-
598 one degrees and thirty minutes (51° 31′) west one hundred and eighty-eight (188) feet, thence south seventy-eight degrees and fifteen minutes (78° 15′) west one hundred and thirty-four (134), feet thence parallel to south line of forty-acre tract three hundred and ninety and four-tenths ($390\frac{4}{10}$) feet to a point one hundred and twenty (120) feet east of the west line of said forty-acre tract, thence north eight hundred and fifty-four and four-tenths ($854\ \frac{4}{10}$) feet parallel to the west line of said forty-acre tract to the north line of said northeast quarter (¼) of the southwest quarter (¼), thence west along said line one hundred and twenty (120) feet, thence south thirteen hundred and twenty (1320) feet to the first point; also the following tract: Commencing at the southwest corner of the southwest quarter (¼) of northwest quarter (¼), thence easterly ninety-one and six-tenths feet (91.6) along south line of said quarter section; thence northerly parallel to west line of said quarter section about *about* five hundred (500) feet to the center of Mahon's creek; thence down said creek to west line of section nineteen (19); thence southerly about (480) four hundred & eighty feet along said section line to point of beginning, all of the above tracts being in section nineteen (19); and the south half (½) of the northeast quarter (¼) and the west half (½) of the southeast quarter (¼) of section twenty-nine (29), and the north half (½) of the northwest quarter (¼) and the east half (½) of the southeast quarter (¼) of the northwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) and the southwest quarter (¼) of the southeast quarter (¼) and the west half of the northwest quarter (¼) of the northeast quarter (¼); and the
599 following-described tract: Commencing at the southeast corner of the northwest quarter (¼) of the northeast quarter (¼), thence north four and one-half degrees (4½°) west eleven and fifty-hundredths (11.50) chains; thence south eighty-five and one-half degrees (85½°) west ten (10) chains; thence south four and one-half degrees

(4½°) east eleven and fifty-hundredths (11.50) chains; thence north eighty-five and one-half degrees (85½°) east ten (10) chains to first point; also a triangular piece commencing at the northwest corner of the above lot, thence north seven (7°) degrees east three and twenty-five hundredths chains; thence north seventy-seven degrees (77°) west sixty-five (65) links to a point on north and south line, all of the above tracts being in section thirty (30); also the south half of the northeast quarter (¼) and the northeast ¼ of the southeast quarter (¼) of section thirty-one (31); also the south half of the northwest quarter (¼) and the northwest quarter of the northeast quarter (¼) and the south half (½) of the southwest (¼) and the west half (½) of the southeast quarter (¼) of section thirty-two (32).

And the following-described real estate situate in Shelby county, State of Alabama: The southwest quarter of the southeast quarter (¼) of section nineteen (19), township twenty-one (21) south, range two (2) west, and the southwest quarter (¼) of the northeast quarter of section thirty-five (35), township nineteen (19) south, range three (3) west, and the southwest quarter (¼) of the northwest quarter (¼) of section two (2), township twenty (20) south, range three (3)
600 west, and the south half of the southeast quarter (¼), section six (6), township twenty-one (21) south, range three west; and the following — in township twenty-one (21) south, range three (3) west, namely: The northwest quarter (¼) and the southeast quarter (¼) of the northeast quarter (¼) and the northwest quarter (¼) of the southeast quarter (¼) and the southwest quarter of the southwest quarter (¼) of section seven (7), and the west half (½) of the northwest quarter of section eight (8), and the southeast quarter (¼) of the northwest quarter of section seventeen (17); and the undivided half interest in the following lands, namely: The southwest quarter (¼) of the northwest quarter (¼) and the north half (½) of the southwest quarter (¼) of section seventeen, and undivided half (½) and the north half (½) of the southeast quarter, ¼, and the southeast quarter (¼) of the northeast quarter (¼) and the northeast quarter (¼) of the southwest quarter (¼) of section eighteen (18), and the entire interest in the north half (½) of the northwest quarter (¼) and the west half (½) of the southwest quarter (¼) and the northeast quarter (¼) of the northeast quarter (¼) and the southwest quarter (¼) of the southeast quarter (¼) section eighteen (18), and the southeast quarter, ¼, of the southeast quarter (¼) and the southeast quarter (¼) and the east half (½) of the southwest quarter (¼) of section nineteen (19), and the west half (½) and the west half of the southeast quarter (¼) and the northeast quarter of the southeast quarter (¼) and the west half of the northeast quarter and the southeast quarter of the northeast quarter of section twenty (20), and the southwest quarter of the north-
601 east quarter (½) and the northwest quarter of the southwest quarter (¼) of section twenty-three (23), and north half (½) of the northwest ¼ and the southwest quarter (¼) of the southwest quarter (¼) of section twenty-nine (29), and the north half (½) of the northeast quarter (¼) and the east half (½) of the southeast quarter (¼) and the southwest quarter (¼) of section thirty (30), and the northwest quarter and the northwest quarter (¼) of the southwest

quarter (¼) and the east half of the northeast quarter (¼) of section thirty-one (31), and the northeast quarter (¼) of the northwest quarter (¼) of section thirty-two (32), and the following lands in township twenty-two (22) south, range three (3) west, namely: The west half (½) of the northwest quarter (¼), section five (5), the west half (½) of the southeast quarter (¼) and the west half of the east half of the southeast quarter (¼) and the southwest quarter (¼) of the northeast quarter and the northwest quarter of section six (6), and the northwest quarter and the northwest quarter (¼) of the northeast quarter section (7), and the following lands in township twenty-one (21) south, range four (4) west, namely: The east half (½) of the northwest quarter (¼) and the east half (½) of the suthwest quarter (¼) and the southwest quarter (¼) of the southwest quarter (¼) and the southeast quarter of section three (3), and the northeast quarter (¼) of the northwest quarter (¼) and the southwest quarter (¼) of the southwest quarter of section six (6) and the north half of the northwest quarter (¼) and the southwest quarter (¼) of the northwest quarter (¼) and the southeast quarter (¼) of the northeast quarter (¼) of section seven (7), and the northwest quarter (¼) of the northwest quarter (¼) and the southeast quarter (¼) of the northwest quarter (¼) and the northeast quarter of the southwest quarter (¼) and the undivided one-third (⅓) interest in the south half (½) of the southwest quarter (¼) of section ten (10), and the south half (½) of the northeast quarter (¼) of section twelve (12), and the whole of section thirteen (13), and the undivided one-third (⅓) interest in the north half (½) of the northeast quarter (¼) and the southwest quarter of the northwest quarter (¼) and the west half of the southwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) and the south half of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the east half (½) of the northeast quarter (¼) of section fifteen (15), and the whole of section sixteen (16), and the west half (½) of the southwest quarter (¼) and the west half of the southeast quarter (¼) and the southeast quarter (¼) of the southeast quarter (¼) of section (17) seventeen, and the north half of the northwest quarter (¼) and the southwest quarter (¼) and the northwest quarter (¼) of the southeast quarter (¼) and the west half of the northeast quarter (¼) of section nineteen, and the undivided one-third (⅓) interest in the northwest quarter (¼) and the whole of the northeast quarter (¼) of section twenty-two (22), and the southeast quarter (¼) of the northwest quarter (¼) and the northwest quarter of the southeast quarter of section twenty-four (24), and the undivided one-third (⅓) interest in the north half (½) of the northwest quarter (¼) and in the southwest quarter (¼) of the northwest quarter (¼) and the whole of the southeast quarter (¼) of the southwest quarter (¼) of section twenty-eight (28), and the northwest quarter (¼) of the northwest quarter (¼) of section twenty-nine (29), and the west half (½) of the northwest quarter (¼) and the southeast quarter (¼) of the northwest quarter (¼) and the southwest quarter (¼) and the south half of the southeast quarter (¼) and the northeast quarter (¼) of the northeast

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quarter (¼) and the south half of the northeast quarter (¼) and the undivided one-third (⅓) interest in the north half of the northeast quarter (¼) and the undivided one-third (⅓) interest in the northeast quarter (¼) of the northwest quarter (¼) of section thirty (30), and the southeast quarter of the northwest quarter (¼) and the southwest quarter (¼) of the southwest quarter (¼) and the northeast quarter (¼) of the southwest quarter (¼) of section thirty-one (31), and the southeast quarter (¼) of section thirty-two (32), and the southwest quarter (¼) of the southwest quarter (¼) and the north half of the southeast quarter and the southeast quarter of the northeast quarter (¼) and the east half of the northeast quarter (¼) of section thirty-three (33), and the north half of the northeast quarter of section thirty-four (34), and the west half of the southwest quarter (¼) and the west half (½) of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the south half of the northeast quarter (¼) of section thirty-five
(35), and the west half (½) of the northwest quarter (¼)
604 and the north half (½) of the southwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) and the northeast quarter (¼) of section thirty-six (36,) and the following real estate situate in township twenty-one (21) south, range five (5) west, namely: The west half of the northwest quarter (¼) and the east half of the southeast quarter (¼) and the southwest quarter of the northeast quarter (¼) of section one (1), and the northeast quarter and the west half (½) of the southwest quarter of section two (2), and the northwest quarter (¼) of the southeast quarter (¼) and the northeast quarter (¼) of the northeast quarter (¼) of section twelve (12), and the north half of the northeast quarter (¼) of section twenty-two (22), and the east half (½) of the southeast quarter (¼) of section twenty-three (23), and the north half (½) of the southeast quarter (¼) and the southwest quarter of the southeast quarter (¼) of section twenty-four (24) and the west half of the southwest quarter (¼) and the southeast quarter (¼) of the northwest quarter (¼) of section twenty-five (25), and the east half (½) of the southeast quarter (¼) of section twenty-six (26), and the northeast quarter (¼) of the northeast quarter (¼) of section thirty-five (35), and the northwest quarter (¼) of the northwest quarter (¼) and the east half (½) of the northeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the undivided one-third (⅓) interest in the southwest quarter (¼) of the northwest quarter (¼) and in the north half (½) of the southwest quarter (¼) and in the northwest quarter (¼) of the southeast quarter
(¼) of section thirty-six (36), and the following real estate in
605 township twenty-two (22) south, range four (4) west, namely: The north half of the northeast quarter (¼) and the southeast quarter of the northwest quarter (¼) and the south half (½) of section one (1), and the northwest quarter (¼) of the northeast quarter (¼) and the southeast quarter (¼) of the southeast quarter (¼), section two (2), and the northeast quarter (¼) and the south half of the northwest quarter (¼) and the southwest quarter (¼) and the west half of the southeast quarter (¼) and southeast quarter (¼) of the southeast quarter (¼) of section four (4), and the southwest quarter of

the northeast quarter (¼) of section six (6), and the southeast quarter (¼) of the northeast quarter (¼) of section eight (8), and the east half (½) of the northwest quarter (¼) and the west half (½) of the northeast quarter (¼) of section nine (9), and the southeast quarter (¼) of the northwest quarter (¼) and the north half (½) of the southwest quarter of section ten (10), and the north half (½) of the northwest quarter (¼) and the north half (½) of the southeast quarter (¼) of the northwest quarter (¼) and the east half (½) of the southwest quarter (¼) and the southeast quarter (¼) and the south half (½) of the northeast quarter (¼) and the northeast quarter (¼) of the northeast quarter (¼) of section eleven (11), and the north half of the northwest quarter (¼) and the north half (½) of the northeast quarter (¼) and the southeast quarter (¼) of the northeast quarter and the east half (½) of the southeast quarter (¼) and the southwest quarter (¼) of the southeast quarter (¼) of section twelve (12), and the northwest quarter (¼) of the northeast quarter (¼) of section thirteen (13), and the west half (½) of the southwest quarter
606 of section fourteen (14), and the west half of the northeast quarter (¼) and the north half (½) of the south half (½) of section fifteen (15), and the northeast quarter (¼) and the south half of section sixteen (16), and the northwest quarter (¼) and east half (½) of section twenty (20), and the south half (½) of section twenty-one (21), and the east half (½) and the west half (½) of the west half (½) and the northwest quarter (¼) of the northwest quarter (¼) of section twenty-two (22), and the west half (½) and the west half of the east half of section twenty-three, and the north half (½) of the northeast quarter (¼) of fractional section twenty-six (26), and the north half of the northeast quarter (¼) of fractional section twenty-seven (27), and the following real estate situate in township twenty-four (24) north, range eleven (11) east, namely: The whole of section one (1), and the east half (½) and the southwest quarter (¼) and the south half (½) of the northwest quarter (¼) of section two (2), and the east half of the northeast quarter (¼) and the north half (½) of the southwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) and the southeast quarter (¼) and the west half (½) of the northeast quarter (¼) and the southeast quarter (¼) of the northeast quarter (¼) of section three (3), and the north half (½) and the north half of the southwest quarter (¼) and the southwest quarter (¼) of section twelve (12), and the north half (½) and the northeast quarter (¼) of the southwest quarter (¼) and the east half (½) of the southeast quarter (¼) of section eleven (11),
607 and the northeast quarter (¼) of section thirteen (13); and the following real estate situate in township twenty-four (24) north, range twelve (12) east, namely: The west half (½) of the west half (½) and the east half (½) of the southeast quarter (¼) of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) of section six (6), and the west half (½) of the southwest quarter (¼) of section five (5), and the west half (½) of the northwest — (¼) and the southeast quarter (¼) of the northwest quarter (¼) and the northeast quarter (¼) of the southwest quarter (¼) and the southwest quarter (¼) of the northeast quarter (¼), and the undivided one-half (½) interest in the southwest quarter of the southwest quarter (¼) of sec-

tion seven (7), and the northwest quarter (¼) of the northwest quarter (¼) and the east half of the southwest quarter (¼) of section eighteen (18), and the northwest quarter (¼) of the southwest quarter (¼) and the east half (½) of the southeast quarter (¼) of the southwest quarter (¼) of section seventeen (17), and the south half (½) of the northeast quarter (¼) and the northeast quarter (¼) of the northeast quarter (¼) of section twenty (20), and the northwest quarter (¼) of the southwest quarter (¼) of section ten (10), and the southeast quarter (¼) and the south half (½) of the southwest quarter and that portion of the northwest quarter (¼) of the southwest quarter (¼) which lies south of the Centreville — Montevallo dirt road, all in section nine (9), and the southeast quarter (¼) of the southeast quarter and that portion of the entire southeast quarter (¼) of section eight (8) which lies south of the Centreville and Montevallo dirt road; and the mineral interest in and the mining rights to the following tracts of land,
608 namely: The east half (½) of the northeast quarter (¼) of section seventeen (17), and the southwest quarter (¼) of section twenty-five (25), and the south half (½) of the southeast quarter (¼) of section twenty-six (26), and the northeast quarter (¼) of the northeast quarter (¼) of section thirty-five (35), and the northeast quarter (¼) of the northwest quarter (¼) of section thirty-six (36), all of the above tract being in township twenty-one (21) south, range four (4) west, and the southwest quarter (¼) of section two (2), and the northeast quarter (¼) of the southeast quarter (¼) of section three (3), both of the above tracts being — township twenty-two south, range four (4) west, and the entire interest in the southeast quarter (¼) of the the southeast quarter (¼) of section thirty-two (32), township twenty (20) south, range three (3) west.

And the following-described real estate situate in Chilton county, State of Alabama, namely: The northwest quarter (¼) of section twenty-one (21) and the north half (½) of the northwest quarter (¼), section twenty-eight (28), and the north half (½) of the northwest quarter (¼) of section sixteen (16), and the west half (½) of the southwest quarter (¼) of section fourteen (14), and the west half (½) of the east half (½) of the southwest quarter (¼) of section fourteen (14), all of the above-described land lying in township twenty-four (24) north, range twelve east; and the west half (½) of the northeast quarter (¼) and the northwest quarter (¼) and the northeast quarter (¼) and the west half (½) of the southwest quarter (¼) and the northwest quarter
(¼) of the southeast quarter (¼), all in section thirty (30), town-
609 ship twenty-four (24) north, range thirteen (13) east; and the west half (½) of the southeast quarter (¼) and the northwest quarter (¼) of the northeast quarter (¼), and five acres — east half (½) of the southeast quarter (¼), commencing at the ford of Dry creek and running along the Montgomery road fifty (50) rodds south, thence due south, leaving grave-yard on west side of line, and situated in section nineteen (19), township twenty-four (24) north, range thirteen east; also the northeast quarter (¼) of the northeast quarter (¼) of section twenty-six (26), township twenty-four (24) north, range twelve (12) east; also the north half (½) of fraction B, township twenty-four (24) north, range twelve (12) east, except seventeen (17) acres off the

northwest corner and four acres for the Concord church; also the north half (½) of fractional section twenty-five (25), township twenty-four (24) north, range twelve (12) east, except four acres off the northeast corner; also the northeast quarter and the south half (½) of the southwest quarter (¼) of section eighteen (18), township twenty-four (24) north, range thirteen east; also the mineral and mining rights on the south half (½) of fraction B of section thirteen, and the southeast quarter (¼) of the southeast quarter (¼) of section fourteen (14), and the northeast quarter of the northeast quarter (¼) of section twenty-three (23), and the northeast quarter (¼) of the northeast quarter (¼) of the northeast quarter (¼) of section twenty-three (23), all in township twenty-four (24) north, range twelve (12) east, and the northwest quarter (¼) of the southeast
610 quarter (¼) of section eighteen (18), township twenty-one (21) north, range thirteen east, and all the mineral and mining rights on the whole of section fifteen (15), township twenty-four (24) north, range twelve (12) east, except the northwest quarter (¼) of the northwest quarter (¼); also the mineral and mining rights on the following-described lands in *in* township twenty-four (24) north, range twelve (12) east, namely: The northwest quarter (¼) of the northeast quarter (¼) and the southeast quarter (¼) of the southeast quarter (¼) of section sixteen (16), and the north half of section twenty-two (22), and the northeast quarter of section twenty-one, and the west half of the southwest quarter of section twenty-one.

And also the following-described personal property of the party of the first part in the county of Bibb, State of Alabama, used and employed in and about the iron-ore banks, ore-masher, stock sheds, blast furnace, store, office, stock yard, blacksmith shops, carpenter shops, coking ovens, coal-washer, railways, rolling mill, nail factory, cooper shop, pattern shop, machine shop, foundary, storehouse, offices, houses, and other places owned or controlled by the party of the first part as follows: Two locomotives, fifty railroad cars for coal, coke, and ore, forty-one cars, one hundred wheelbarrows, two hundred picks, forty drills, forty hammers, twenty mules and harness, four wagons, six sets of blacksmith tools, rolling mill, nail factory,
611 machine shop, foundry and pattern shop, tools, two hundred shovels, ten carts, six sets of ropes and sheave blocks, office furniture and safes, goods in store at furnace and Brierfield, and all the lime, stone, brick, ore, coke, coal, and pig-iron, muck bar, nail plate, merchant bar, nails, kegs, castings, railroad iron, spikes, & track tools, money, bills receivable, accounts, and credits of every kind, wheresoever situate; and also the following personal property in the county of Shelby, State of Alabama, employed in and about the coal mines and quarries of the party of the first part: One hundred and fifty-nine cars, eight mules & harness, two wagons, one hundred shovels, one hundred picks, fifty drills, one hundred hammers, four hundred kegs powder, three boxes dynamite, wire and hemp ropes, sheave wheels, oil, lamps, car wheels and axles, and irons, cross-ties, railroad iron, timber, lumber and props, two sets blacksmith tools and iron in blacksmith shops, scales, shelves, counters, and stock of goods in store, and the surplus, if any there

be, from proceeds of sales of nails now held as collateral for bonds in the cities of Mobile, Alabama, and Memphis, Tennessee; and also any and all articles of personal property belonging to the party of the first part that are not herein specified, including all debts of every kind due to it and all rights of action and credits of every kind; and the party of the first part will at any time, on the request of *of* the party of the second part, furnish to him or
612 to his successor in the trusts and conveyances in said deed hereinabove set forth — render exact inventories and schedules of the property conveyed in said deed and herein more specifically described, and will in like manner and on like request of said trustee or his successor in office deliver to him or them all writings, deeds, instruments, and m*inim*iments of title relating to the real and personal property described and included or intend to be included by whatever description in said deed of conveyance hereinabove set forth that are in the possession or under the control of the party of the first part; to have and to hold the real and personal property conveyed — said deed of trust hereinabove set forth and in this instrument more fully and specifically described to the party of the second part, as trustee, and to his successors in said trust in the same manner, and to the same extent, and to the same intent and purpose, and subject to the same trusts, and with the same powers therein conferred, and subject to the same agreements and covenants, and for the same purposes as are expressed in said deed of conveyance hereinabove set forth.

In witness whereof the said party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its president and attested by its secretary on this the twenty-ninth day of July, A. D. 1887.

THOMAS J. PETER,
President of the Brierfield Coal & Iron Company of Alabama.

Attest: E. T. PETER, *Secretary.* [SEAL.]

613 Witnesses:
J. B. JEMISON, July 29, 1887.
E. E. LENON, July 29, 1887.

THE STATE OF ALABAMA, }
Bibb County. }

I, Fred. Pfoff, a justice of the peace in and for said State and county, hereby certify that Thomas J. Peter, whose name is signed to the foregoing conveyance *is* president of the Brierfield Coal and Iron Company of Alabama and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily as president of said company and by its order and direction, and that he affixed the seal of the company thereto on the day the same bears date.

Given under my hand this 29th day of July, A. D. 1887.

FRED. PFOFF,
Justice of the Peace.

STATE OF ALABAMA, }
Bibb County. }

I hereby certify that the within conveyance was filed in my office for record on the thirtieth day of July, 1887, at nine o'clock a. m., and duly recorded in Y of Deeds, pages 431 to 458, on the thirtieth day of July, 1887.

JNO. S. GARDNER,
Judge of Probate.

STATE OF ALABAMA, }
Shelby County. }

I hereby certify that the within conveyance was filed in my office for record on the first day of August, 1887, and recorded in volume nineteen, on pages 54 to 84.

JAMES T. LEEPER,
Judge of Probate.

STATE OF ALABAMA, }
Chilton County. }

I, H. J. Callin, judge of the probate court in and for said county, do hereby certify that the foregoing conveyance was filed for record on the second day of August, 1887, and that the same was this day duly recorded in my office in volume seventeen of Deeds, on page 258.

Given under my hand this fourth day of August, 1887.

H. J. CALLIN,
Judge of Probate.

Filed this 6th day of August, A. D. 1887.

J. W. DIMMICK, *Clerk.*

614 *Amended & Supplemental Bill.*

In the Circuit Court of the United States for the Middle District of Alabama.

PRESTON B. PLUMB, Trustee, Complainant, }
vs. }
BRIERFIELD COAL AND IRON COMPANY *and et al.*, Def't. } In Equity. 103.

To the judges of the circuit court of the United States for the middle district of Alabama:

1. Preston B. Plumb, a citizen of the State of Kansas and as trustee aforesaid, by way of amended & supplemental bill, shows that on, to wit, the 3d day of August, 1887, he filed his original bill in this court against the Brierfield Coal and Iron Company, a corporation created and organized under the laws of Alabama, and also against other defendants named in said bill, the object of said bill being to obtain the direction and assistance of this court in the administration and settlement of the trust created in your orator as

prayed, will proceed to take possession of, advertise, and sell said property for the entire amount of the balance of purchase-money unpaid, as shown by this bill.

Your orator makes the said William D. Carter and the said Kearsley Carter, Jr., parties defendant to this cause. The premises considered, your orator prays that writs of subpœna may issue to the said William D. Carter and Kearsley Carter, Jr., directing and requiring them and each of them to appear, answer, plead, or demur to the original and amended supplemental bills filed in this cause within the time and within the manner prescribed by the rules of this court and the note hereto written.

Your orator further prays that your honors will issue forth-
619 with a restraining order, to be directed to the said William D. Carter and Kearsley Carter, Jr., enjoining and restraining them and each of them, their agents and attorneys, from advertising for sale and from attempting to sell the property embraced in said mortgage or any part thereof, and from any and all interference and intermeddling with said property until the further order of this court.

Your orator further prays that it may be referred to a special master of this court to take and state an account of the amount due on said mortgage debt, and also to ascertain and report to the court what portion of said mortgage debt is the individual property of the said William D. Carter, and that the indebtedness of the said William D. Carter to the said Brierfield Coal and Iron Company may be set off in this court against such sum as may be reported by the master as being the interest of said William D. Carter in said mortgage debt.

Your orator prays for such further or other relief as the facts and circumstances may warrant and as to equity may seem meet and proper; and orator will ever pray, &c.

PRESTON B. PLUMB, *Trustee*,
By THORNTON & SMITH,
Compl't's Sol's.

THORNTON & SMITH, *Sol's.*
JNO. T. MORGAN, *Of Counsel.*

NOTE.—The said William D. Carter & Kearsley Carter, Jr., are each requested to answer section two of original bill so far as the averments thereof relate to them, and also all the statements & averments contained in sections 1 and 2 of this amended supplemental bill, but without oath, — to their several *several* answers
620 being hereby waived.

THORNTON & SMITH,
Compl't's Sol's.

Before me, J. M. Savage, deputy clerk of the circuit court of the United States for the middle district of Alabama, — Thomas J. Peter, who, being by me duly sworn, doth state on oath that he is the agent in behalf of the complainant, P. B. Plumb, and that he has personal knowledge of the facts stated in the foregoing amended and

supplemental bill, and that the matters set forth in said bill are true in substance & and in fact.

T. J. PETER.

Sworn to and subscribed before me this 26th day of August, 1887.

J. M. SAVAGE,
Dep'ty Clerk U. S. Cir. Court, Mid. Dist. of Ala.

EXHIBIT A TO AMENDED BILL.

STATE OF ALABAMA, }
Bibb County. }

This agreement, made and entered into this day between the Brierfield Coal and Iron Company, by its president, T. J. Peter, and William D. Carter & Kearsly Carter, Jr., witnesseth: That whereas the said Brierfield Coal and Iron Company being indebted to the said William D. Carter & Kearsly Carter, Jr., in the sum of thirteen thousand three hundred and thirty-three $\frac{33}{100}$ dollars, evidenced by its unnegotiable note dated June 9th, 1883, the balance of the purchase money of certain lands sold to said company by said William D. & Kearsley Carter, Jr., which said sum is now due, with six
621 per cent. interest from the date of said note: Now, in order to settle said indebtedness between said parties in accordance with the terms of an agreement heretofore made by and between said parties, it is hereby agreed and stipulated as follows:

That certain mortgage given by said Brierfield Coal and Iron Company to said William D. & Kearsley Carter, Jr., to secure the aforesaid note, which mortgage is now of record in the office of the probate judge of Bibb county, State of Alabama, shall remain in full effect and unsatisfied until complete payment of said indebtedness shall be fully made by said company in the manner hereinafter agreed on, following: From said indebtedness of thirteen thousand three hundred and thirty-three $\frac{33}{100}$ dollars the sum of fourteen hundred dollars shall be deducted by said company and be retained by said company until the title to two hundred and eighty acres of the aforesaid lands, now claimed by the Alabama Mineral Land Company, shall be perfected and vested in said Brierfield Coal and Iron Company, upon the happening of which event the said company shall pay to said William D. & Kearsley Carter, Jr., or order, said fourteen hundred dollars, with interest from the 9th day of June, 1883; and it is agreed that from the sum remaining after said deduction of fourteen hundred dollars is made, with interest at six per cent. thereon from the 9th day of June, 1887, making the amount of fourteen thousand seven hundred and ninety-seven $\frac{33}{100}$ —,
622 the said Brierfield Coal and Iron Company shall deduct and retain the sum of one thousand dollars until said B. C. & I. Company shall be discharged finally from any liability arising to it from the suit of Frank Fitch now pending in the chancery court of Bibb county, State of Alabama, upon which discharge said sum of one thousand dollars, with legal interest from the 9th day of June, 1887,

shall be paid by said B. C. & I. Company to William D. & Kearsley Carter, Jr., or their order. It is also agreed that the sum of two thousand dollars shall be deducted and reserved by said B. C. & I. Company from said sum of fourteen thousand seven hundred and ninety-seven $\frac{33}{100}$ dollars until the final discharge of said company as garnishee at the suit of H. C. Foucher now pending in the chancery court of Bibb county, State of Alabama. It is further agreed that upon the happening of this event the said B. C. & I. Company shall pay to William D. and Kearsley Carter, Jr., or their order, the said sum of two thousand dollars, with legal interest from the 9th day of June, 1887. It is also agreed that the B. C. & I. Company shall deduct and retain from said sum of fourteen thousand seven hundred and ninety-seven $\frac{33}{100}$ dollars the sum of nine hundred dollars until said B. C. & I. Company shall be finally discharged from garnishment now pending at the suit of Spencer Brothers against it in the circuit court of Bibb county, State of Alabama,

623 upon the happening of which event the said B. C. & I. Company shall pay to said William D. & Kearsley Carter, Jr., or their order the sum of nine hundred dollars, with legal interest from the 9th day of June, 1887; and now, to settle and pay said sum of fourteen thousand seven hundred and ninety-seven $\frac{33}{100}$ dollars after the foregoing sums have been deducted and retained as hereinbefore set forth, it is hereby agreed by and between the parties hereto that said B. C. & I. Company make and deliver to said William D. and Kearsley Carter, Jr., said company's negotiable notes dated the 9th day of June, 1887, which is done for the extinguishment of ten thousand eight hundred and ninety-seven $\frac{33}{100}$ dollars of said indebtedness of fourteen thousand eight hundred and ninety-seven $\frac{33}{100}$ dollars as aforesaid; whereupon it is understood that the said note of said B. C. & I. Company for thirteen thousand three hundred and thirty-three $\frac{33}{100}$ dollars is to be surrendered and delivered up to said company, said new notes being as follows: One note for $1,000.00, payable October 20th, 1887, with 8% interest from date; one note for $1,500.00, payable November 20th, 1887, with 8% interest from date; one note for $1,500.00, payable December 20th, 1887, with 8% interest from date; one note for $1,500.00, payable January 20th, 1888, with 8% interest from date; one note for $1,500.00, payable February 20th, 1888, with 8% interest from date; one note for *one* $1,000, payable March 20th, 1888, with 8% interest from date, and one note for $897.33, payable April 20th, 1888, with 8% interest from date, leaving a balance of two thousand dollars of said ten thousand eight hundred and ninety-seven $\frac{33}{100}$ dollars, which it is agreed by the said parties shall be satisfied and extinguished in the manner following, to wit: Whereas the said T. J. Peter owns stock in the Brierfield Saw-Mill and Lumber Company, a corporation, to the amount of thirty-five hundred and fifty-six $\frac{16}{100}$ dollars, which the said T. J. Peter agrees to transfer to said William D. Carter at the price of seventy dollars per share, amounting to the price of twenty-four hundred and eighty-nine $\frac{31}{100}$ dollars; two thousand dollars of which it is agreed shall be applied as aforesaid, the re-

mainder, four hundred and eighty-nine $\frac{31}{100}$ dollars, to be paid by said William D. Carter to said T. J. Peter in money.

In testimony whereof the said Brierfield Coal and Iron Company, by its president, T. J. Peter, and said William D. Carter and Kearsley Carter, Jr., have and hereto set their hands and seals this the 12th day of July, A. D. 1887.

BRIERFIELD COAL & IRON COMPANY, [SEAL.]
By T. J. PETER, *Pres't.* [SEAL.]
W. D. CARTER. [SEAL.]
K. CARTER, JR. [SEAL.]

Attest:
H. L. OLIVER.
E. T. PETER.

Filed August 26, '87.

J. W. DIMMICK, *Clerk.*

624 *Order of Publication.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

P. B. PLUMB, Trustee,
vs.
BRIERFIELD COAL & IRON COMPANY, *et als.* } 103.

Now comes the solicitors of complainant and move the court for an order of publication to the said Carrie S. Plumb, Justin S. Morrill, George I. Seney, Calvin S. Brice, Samuel Thomas, Laura E. Williams, and M. S. Pomeroy, the non-resident defendants mentioned in said bill; and it appearing to the court that the said Carrie S. Plumb resides at Emporia, in the State of Kansas, and the said Justin S. Morrill resides at Strafford, in the State of Vermont, and the said George I. Seney, Calvin S. Brice, and Samuel Thomas each reside in the city and State of New York, and said Laura E. Williams resides at Cincinnati, Ohio, and M. S. Pomeroy resides at Washington, District of Columbia, and that personal service upon them is not practicable, it is therefore ordered and decreed by the court that the clerk of this court do forthwith make publication to each of them in the Daily Mongomery Advertiser, and mail a public newspaper published in the city of Montgomery, Alabama, once a week for six consecutive weeks, requiring each of them to appear, plead, answer, or demur to the bill of complaint in this cause within thirty days after said period of six weeks shall expire, or that at the next rule day after said period of thirty days shall expire a decree *pro confesso* will be rendered against each of them upon
625 said bill of complaint and all the obligations of said bill of complaint as against them be taken as confessed; and the clerk of this court will mail to each of the — one copy of said newspaper containing said order of publication, properly directed to

each of them at their places of residence aforesaid, postage prepaid, marking said notice of publication with ink, so as to call the attention of said above-named defendants thereto.

JOHN BRUCE, *Judge.*

August 4th, 1887.

Filed this 4th day of August, 1887.

J. W. DIMMICK, *Clerk.*

Motion of Trustee for Authority to Borrow Money.

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

PRESTON B. PLUMB, Trustee,
vs.
BRIERFIELD COAL & IRON COMPANY *et als.* } 103.

Comes the complainant and now here moves the court to authorize him as trustee, as shown in the bill of complaint, to borrow on the faith and security of said trust property the sum of twenty-five thousand dollars ($25,000.00), or such sum as the court may direct, to be applied by him to the payment of the wages due to operatives, laborers, and employees of said company, to wit, the sum of ten thousand dollars ($10,000.00), and to the amount of unpaid purchase-money in favor of W. D. & K. Carter, Jr., on the land on which the iron furnace and a portion of the valuable ore beds of said company are located said balance, so far as the same is undisputed, to wit, eleven thousand four hundred and seventy-four $\frac{60}{100}$ dollars ($11,474.60), and to the payment of the balance of the purchase-money for a locomotive engine due to the Baldwin Locomotive Works, Philadelphia, Penn., viz., the sum of one thousand ninety-two $\frac{52}{100}$ ($1,092.52) dollars; and also to the payment of all unpaid balance of purchase-money due to the State of Alabama for the purchase of section sixteen (16) of township twenty-two (22) of range four (4), in Shelby county, Alabama, which balance, with interest, amounts to the sum of, to wit, three thousand ($3,000.00) dollars, and authorizing complainant, as trustee as aforesaid, to issue certificates or other evidences of debt for such loan in sums of one thousand dollars each, payable at such place and times as the court may direct, said certificates or evidences of debt to be made by the order of the court a prior lien on all the trust property described in the bill over and above all other liens except that for taxes.

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This motion is based on the allegations and statements set forth in the sworn bill of complaint and affidavits in support of the motion.

PRESTON B. PLUMB,
Trustee, Complainant.
By JOHN T. MORGAN, *Of Counsel.*
THORNTON & SMITH, *Compl't's Sol's.*

JNO. T. MORGAN, *Of Counsel.*
THORNTON & SMITH, *Compl't's Sol's.*

Filed this 6th day of August, A. D. 1888.

J. W. DIMMICK, *Clerk.*

627 *Order Authorizing Trustee to Borrow Money.*

In the Circuit Court of the United States for the Middle District of Alabama.

PRESTON B. PLUMB, as Trustee, Complainant,
vs.
THE BRIERFIELD COAL & IRON CO. *et als.*, Respondents.
} 103. On the Equity Side of said Court.

This day came Preston B. Plumb, as trustee of the Brierfield Coal and Iron Company, who in and by the bill of complainant filed in this cause on the 3d day of August, 1887, and the amendment thereto filed on the sixth day of August, 1887, having submitted himself as such trustee and the trust property described in the said bill of complaint to the jurisdiction of this court for its orders, directions, and decrees in the matter of the administration of said trust by said trustee, and moves the court for an order authorizing & empowering said trustee to borrow on the faith & the security of said trust property the sum of twenty-five thousand dollars or such other sum as may be necessary, to be applied by him to the wages due to laborers, operatives, and employees, and to the payment of unpaid purchase-money on certain portions of said trust property, as shown by said motion;

And it being made to appear to the satisfaction of the court that the sum of eleven thousand four hundred and seventy-four $\frac{60}{100}$ dollars is unpaid and will shortly be due W. D. & K. Carter, Jr., on the land on which the iron furnace and a portion of said valuable ore beds of said company are located, and
628 that there is due to the laborers, employés, & operatives of said company the sum of ten thousand dollars, as shown by Exhibit C attached to the bill of complaint, & that there is due and unpaid to the Baldwin Locomotive Works of Philadelphia the sum of one thousand & ninety-two dollars & fifty-two cents, being a balance of the purchase-money for a locomotive engine now being used in and upon the works of said company, for which balance there is a lien on said locomotive, and that there is now due & unpaid to the State of Alabama the sum of three thousand dollars, being a balance due to said State on the purchase-money of section 16, township 22, range 4, in Shelby county, Alabama, and that the speedy payment & satisfaction of said several demands by said trustee is essential to the preservation of said property, & to continue the same in operation and to prevent the sacrifice of said property and consequent loss & damage to all parties interested therein; and it further appearing to the court that the said trustee, by virtue of the terms of said deed of trust, Exhibit "A," has taken possession of said trust property and, as authorized & required by said deed, is un-

dertaking to keep the works of said company in operation and to execute the trust imposed upon him by said deed, & that there are no funds belonging to said trust estate in the hands of said trustee available for the purpose of paying off and discharging the preferred claims and liens above mentioned, and that for the
629 want of said funds the works of said company cannot be kept in operation by said trustee & said property saved from being damaged by the necessary stoppage of the works and operations of said company, *in* which would result from the non-payment of the wages due laborers, operatives, & employees, & from the foreclosure of said liens on the mines and furnace of said company unless the relief asked for in said motion is granted: It is therefore ordered, adjudged, & decreed by the court that the said trustee be, and he is hereby, ordered and directed by the court to carry on the business of said Brierfield Coal and Iron Company until the respective rights of the parties in interest can be fully ascertained and determined under and subject to the *receiver* and direction of this court & until otherwise ordered *ordered* by this court and pursuant to the terms of said deed of trust.

It is further ordered, adjudged, and decreed by the court that the said trustee be, & is hereby, empowered and directed to make & issue certificates of indebtedness to the amount of twenty-five thousand five hundred and sixty-seven $\frac{12}{100}$ dollars, twenty-five of said certificates to be in the sum of one thousand dollars and one for five hundred sixty-seven $\frac{12}{100}$ dollars, each payable five years after its date to bearer, at the city of New York, State of New York, with interest at the rate of eight per cent. per annum from its date, interest to be payable semi-annually by coupons therefor attached to
630 each of said certificates. It is further ordered, adjudged, and decreed by the court that said trustee be and is hereby authorized and empowered to raise said sum of twenty-five thousand five hundred & sixty-seven $\frac{12}{100}$ dollars for paying and discharging said wages of laborers, operators, and employees and the purchase-money, obligations, and liens hereinbefore specified by selling or hypothecating said certificates, and said certificates, when so made, issued by said trustee shall be a first lien on the entire property of said Brierfield Coal and Iron Company embraced by said deed of trust of the 1st day of September, 1882, and more specifically described in said subsequent deed of July 29th, 1887, set forth in Exhibit A to the bill of complaint, over and above and before any and all other liens on said property, which fact shall be recited on the face of each of said certificates, and the holders of said certificates shall also be subrogated to the liens on said property that may be paid off by the trustee under this authority of this order. It is further ordered that neither said certificates nor any of them nor any coupon thereof shall be disposed of by said trustee in any manner for less than their face value, and when disposed of by him the purchaser shall not be required to see that the money is applied to the uses and purposes for which such certificates are issued. It is further ordered that the said trustee, with the money obtained by said certificates, shall pay off and discharge said sum due to laborers,

operative, and employees, to wit, ten thousand dollars, and said sum due to W. D. & K. Carter, Jr., for the purchase-money of lands on
631 which the furnace — valuable ores are located, to wit, eleven thousand four hundred & seventy-four $\frac{60}{100}$ dollars, and to the Baldwin Locomotive Works of Philadelphia the balance due on the purchase-money of an engine, said balance being a lien on such engine, to wit, one thousand and ninety-two $\frac{52}{100}$ dollars, and to the State of Alabama the balance of purchase-money of lands bought by said company from it, said balance being three thousand dollars.

It is further ordered that said trustee file in this court a full inventory of all the personal property embraced by said deed, and that he make full and complete report to this court of all his acts and doings under this decree.

August 12th, '87.

JOHN BRUCE, *Judge.*

Filed this 12th day of August, 1887.

J. W. DIMMICK, *Clerk.*

632 *Answer of City National Bank of Selma.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

PRESTON B. PLUMB, Trustee,
vs.
THE BRIERFIELD COAL AND IRON COMPANY, THE CITY NATIONAL BANK (OF SELMA), and Others. } #103.

The separate answer of The City National Bank (of Selma), a corporation under the laws of the United States, located at and doing business in the city of Selma, Dallas county, Alabama, one of the defendants, to the bill of complaint lately exhibited in the circuit court of the United States for the middle district of Alabama against the Brierfield Coal and Iron Company, the City National Bank (of Selma), and others by Preston B. Plumb, trustee, complainant.

SECTION 1. The said City National Bank of Selma, defendant, for answer to said bill of complaint, says that this defendant is informed and believes and therefore states that the Brierfield Coal and Iron Company is a corporation duly chartered under the laws of the State of Alabama, and has its principal office and place of business at Brierfield, in Bibb county, in the State of Alabama, and that said complainant is a citizen of the State of Kansas; and this defendant further states, on information and belief, that the said Brierfield Coal and Iron Company was incorporated as stated in the first section of said bill, and that afterwards the incorporation of said company was ratified and confirmed and its corporate powers enlarged by an act of the General Assembly of Alabama entitled "An act to amend and
633 ratify the charter of the Brierfield Coal and Iron Company of Bibb County, Alabama," approved December 12th, 1884.

That this defendant has no knowledge or information as to the averments in section one of said bill of complaint in reference to the subscriptions made for stock in said Brierfield Coal & Iron Company or in reference to the transfers of said stock or as to the payments made by stock subscribers, and therefore cannot admit or deny the same.

This defendant states, on information and belief, that the mortgage, of which Exhibit "A" to the bill is a copy, was duly executed by said company on, to wit, the first day of September, 1882, by authority of the stockholders of said company and by authority of the board of directors of said company to the said Preston B. Plumb, trustee, and that the same was duly executed by said Preston B. Plumb, trustee.

This defendant further states, on information and belief, that bonds were duly issued under and in accordance with said mortgage or deed of trust, of which Exhibit "A" to the bill is a copy, but this defendant does not know and cannot state what number of bonds were so duly issued by said company under said mortgage or deed of trust except as hereinafter stated.

That this defendant is informed and believes and therefore states that the said Brierfield Coal and Iron Company did, on the 29th day of July, 1887, in accordance with the covenant for further assurances contained in said mortgage or deed of trust aforesaid, execute and deliver to the complainant as trustee a certain other deed of trust, as stated in the first section of said bill of complaint,
634 and each of said deeds were executed by the authority conferred by law on said corporation, and were duly authorized by the stockholders of said corporation and the directors of said corporation, and were duly recorded in the counties of Bibb, Shelby, and Chilton, in the State of Alabama, where the property therein conveyed is situated, and that the complainant duly accepted said conveyances and consented to act as trustee therein.

SECTION 2. And the said defendant, further answering said bill of complaint, says that this defendant is not informed as to the number of bonds issued or sold by the Brierfield Coal & Iron Company under said mortgage or deed of trust except as hereinafter stated; that this defendant is informed and believes and states that the statements in the second section of said bill, giving names of the alleged owners of the bonds issued by the Brierfield Coal & Iron Company at the time said bill was filed and the numbers of such bonds held by each, is not correct; that when said bill was filed this defendant was the holder of twenty-eight bonds, duly issued by said Brierfield Coal & Iron Company under and in accordance with the provisions of said mortgage or deed of trust, of which said Exhibit "A" is a copy; that said bonds so held by this defendant when said bill was filed are respectively numbered 208, 209, 210, 211, 212, 213, 214, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433; that said twenty-eight bonds are each for the payment of one thousand dollars, each dated October 1st, 1882, each in the form prescribed in said mortgage deed of trust, each payable on the first day of October,

635 1912, to Preston B. Plumb, trustee, or bearer, at the office of the said Brierfield Coal & Iron Company in Brierfield or at the office of said company in the city and State of New York, in gold coin of the United States, with coupons for semi-annual interest at the rate of six per cent. from the date, payable on the first days of April and October of each year.

That this defendant became the holder of said bonds in good faith and for a valuable consideration advanced on said bonds when they were received by this defendant; that this defendant received said bonds from said Thomas J. Peter and as his property pledged by said Peter as collateral security for money loaned by this defendant to said Brierfield Coal & Iron Company on the notes of the said company endorsed by said Peter.

That said notes were extended and renewed from time to time; that when said bill was filed said Brierfield Coal & Iron Company was indebted to the defendant in the sum of fourteen thousand dollars, evidenced by four *by four* promis-ory notes, as follows:

1st. Note for two thousand dollars, dated February 12, 1887, payable six months after date at the City National Bank, Selma, Alabama, to the order of the Brierfield Coal & Iron Company, and drawn and endorsed by said company and by said Thomas J. Peter, and protested for non-payment on the 15th day of August, 1887; and this defendant holds said bonds numbered 430, 431, 432, and 433 as collateral security for this note.

636 2nd. Note for five thousand dollars, dated February 25th, 1887, payable six months after date at the City National Bank, Selma, Ala., to the order of the Brierfield Coal and Iron Company, and drawn and endorsed by said company and by said Thomas J. Peter, and protested for non-payment on the 27th day of August, 1887; and the defendant holds the said bonds numbered from 324 to 333, both inclusive, as collateral security for this note.

3rd. Note for thirty-five hundred dollars, dated April 8th, 1887, payable six months after date at the City National Bank, Selma, Ala., to the order of said Thomas J. Peter, and endorsed by said Peter and made by said Brierfield Coal & Iron Company; and this defendant holds the said bonds numbered from 423 to 429, both inclusive, as collateral security for the payment of this note.

4th. Note for thirty-five hundred dollars, dated July 2nd, 1887, and payable six months after date at the City National Bank, Selma, Alabama, to the order of Thomas J. Peter, and made by said Brierfield Coal and Iron Company and endorsed by said Peter and by said company; and this defendant holds the said bonds numbered from 208 to 214, both inclusive, as collateral security for the payment of this note.

That no part of either of said promissory notes has been paid.

This defendant is informed and believes, and therefore states, that said Brierfield Coal & Iron Company purchased from W. D. Carter and Kearsley Carter a large amount of real estate, including all the real estate in Brierfield owned by said company and the

637 furnace of the company, and the said W. D. Carter and Kearsley Carter had a mortgage lien on all the real estate as

sold by them to said company, and that said mortgage lien is not fully satisfied, but this defendant is not informed as to what balance is due or unpaid of said mortgage debt; that this defendant has no knowledge or information as to the other matters or things stated in the second section of said bill except as hereinafter stated.

That this defendant is advised by counsel and informed and believes, and therefore states, that said Preston B. Plumb has no lien on any of the property of said Brierfield Coal and Iron Company covered by said mortgage or deed of trust to said Plumb for or on account of the said debt of $27,500.00 mentioned in the second section of said bill, or for or on account of any debt of said company for which said Plumb is the surety of said company; and this defendant, on the advice of counsel and on information and belief, states and charges that the said mortgage or deed of trust, of which Exhibit "A" to the bill is a copy, is a prior, superior, and paramo-nt lien on all the property covered by said mortgage or deed of trust to all other debts or claims stated in said bill except the balance owing on said mortgage to said W. D. Carter and Kearsley Carter and excepting such liens as have been retained by vendors on property sold to said company since the first day of September, 1882.

And this defendant, on information and belief and advice of counsel, denies that said Thomas J. Peter has any lien on the
638 property covered by said trust deed, of which said Exhibit "A" is a copy, for or on account of any debt of said company for the payment of which said Peter is or was the surety of said company.

SECTION 3. This defendant, on information and belief and the advice of counsel, deny that said John G. Murray or said Thomas J. Peter has any lien on any of the property of said Brierfield Coal & Iron Company for or on account of any of the matters stated in the third section of said bill of complaint.

SECTION 4. This defendant states, on information and belief and the advice of counsel, that this court has no power or jurisdiction on the said bill of complaint or any proceeding thereunder to authorize the complainant or any other person to encumber the property of said Brierfield Coal & Iron Company by mortgage or receiver's certificates or other certificates, and make such lien or encumbrance superior to the lien created by said deed of trust for the purpose of paying any debt which is not now a superior lien to said deed of trust; and this defendant charges, on information and belief and the advice of counsel, that it is contrary to equity and good conscience and the law to pay debts having no liens before the payment of debts secured by a first lien, and that *bona fide* holders of bonds duly issued under said deed of trust ought not to be hindered and delayed for the benefit of creditors without a lien or to enable the said complainant to carry on a business which will endanger the security of said *bona fide* bondholders given to
639 them in said deed of trust, and this for a mere possibility of benefit to the stockholders of said Brierfield Coal & Iron Company who, according to the averments in said bill, have not paid in full their stock subscriptions.

This defendant is informed and believes and states that it will not be for the benefit of the creditors of the said Brierfield Coal & Iron Company to authorize the complainant to borrow money for any purpose on the faith of the property mortgaged to him; that to do so would be to increase the indebtedness rather than to diminish it; that if all of said bonds have been issued to *bona fide* holders, as stated in bill, the annual interest on said bonds will be thirty thousand dollars, one-half thereof payable semi-annually; that complainant resides in a distant State and is almost constantly engaged in his duties as Senator in the United States Senate; and this defendant states, on information and belief, that the complainant would not be able to carry on the business in which said company was engaged and pay the annual expenses of the business and the interest on said bonds from year to year; that the business of mining and making iron ore into pig-iron is very expensive and hazardous, and men of means and skill in that business have in many instances lost large fortunes in the business by the depressions and fluctuations in the market value of pig-iron, and by the accidents and casualities to which the business is constantly exposed.

SECTION 5. This defendant admits and states that the credit of said Brierfield Coal & Iron Company has been destroyed, and
640 that said company is unable to carry on its business; and this defendant charges and states, on information and belief, that the debts of said company can never be paid out of its assets, even if the business of the company should be continued under the management of the complainant; and this defendant, on information and belief, admits that no bondholding creditors have demanded the foreclosure of said mortgage or deed of trust, and that complainant did demand and take possession of the mortgaged property, as stated in the fifth section of said bill.

And this defendant, on information and belief, admits and states that complainant has appointed John G. Murray his general agent, as stated in said bill, and that said Murray is qualified, as stated in the 5th section of said bill.

But this defendant, on information and belief, denies the other matters stated in said fifth section of said bill of complaint.

And, having answered said bill of complaint fully, so far as it is advised it is material for it to answer, this defendant prays to be hence discharged with its reasonable costs in this behalf expended.

PETTUS & PETTUS,
Sol's for Defendant.

THE STATE OF ALABAMA, }
Dallas County. }

I, William P. Parrish, a notary public in and for said county and State, do hereby certify that Albert G. Parrish, who is personally known to me, personally came before me on this day, and,
641 being duly sworn, deposes and says that he is the cashier of the said defendant, the said City National Bank, and is authorized to make this answer, and that the matters and things in

the foregoing answer, when stated as of defendant's knowledge, are true, and when stated on information and belief he believes the same to be true.

ALBERT G. PARRISH.

Sworn and subscribed before me, as witness my hand and official seal this the 3d day of September, A. D. 1887.

[SEAL.] W. P. PARRISH.

Filed this 5th day of September, 1887.

J. W. DIMMICK, *Clerk.*

642 *Answer of James T. Fitzgerald.*

In the Circuit Court of the United States for the Middle District of Alabama.

PRESTON B. PLUMB, Trustee,
vs.
THE BRIERFIELD COAL & IRON COMPANY, JAMES T. FITZGERALD, *et als.* } In Equity. # 103.

The separate answer of James T. Fitzgerald, one of the defendants, to the bill of complaint lately exhibited in the circuit court of the United States for the middle district of Alabama against the Brierfield Coal & Iron Company, a corporation, and the said James T. Fitzgerald and others by Preston B. Plumb, trustee, complainant.

SECTION 1. The said James T. Fitzgerald, defendant, for answer to said bill of complaint, says that this defendant is informed and believes, and therefore states, that the said Brierfield Coal & Iron Company is a corporation duly chartered under the laws of the State of Alabama, and has its principal office and place of business at Brierfield, in Bibb county, in the State of Alabama; and that said complainant is a citizen of the State of Kansas; and this defendant further states, on information and belief, that the said Brierfield Coal & Iron Company was incorporated, as stated in *in* the first section of said bill, and that afterwards the incorporation of said company was ratified and confirmed and its corporate powers enlarged by an act of the General Assembly of the State of Alabama, entitled "An act to amend and ratify the charter of the Brierfield Coal & Iron Company of Bibb county, Alabama," approved December 12th, 1884; that this defendant has no knowledge or informa-
643 tion as to the averments in said bill of complaint in section one, in reference to the subscriptions made for stock in said Brierfield Coal & Iron Company, or in reference to the transfers of said stock, or as to the payments made by stock subscribers, and therefore cannot admit or deny the same. This defendant states, on information and belief, that the mortgage of which Exhibit "A" to the bill is a copy was duly executed by

said company on, to wit, the first day of September, 1882, by authority of the stockholders of said company and by authority of the board of directors of said company to said Preston B. Plumb, as trustee, and that the same was also duly executed by said Preston B. Plumb, trustee. This defendant further states, on information and belief, that bonds were duly issued under and in accordance with said mortgage or deed of trust, of which Exhibit "A" to the bill is a copy, but this defendant does no know and cannot state what number of bonds were so duly issued by said company under said mortgage or deed of trust, except as hereinafter stated.

That this defendant is informed and believes, and therefore states, that the said Brierfield Coal & Iron Company did *did*, on the 29th day of July, 1887, in accordance with the covenant for further assurances contained in said mortgage or deed of trust aforesaid, execute and deliver to the complainant as trustee a certain other deed of trust, as stated in the first section of said bill of complaint, and each of said deeds were executed by the authority conferred by law on said corporation, and by the directors of said corporation, and were duly recorded in the counties of Bibb, Shelby, and
644 Chilton, in the State of Alabama, where the property therein conveyed is situated, and that the complainant duly accepted said conveyances and consented to act as trustee therein.

SECTION 2. And the said defendant, further answering said bill of complaint, says that this defendant does not know and is not informed as to the number of bonds issued or sold by the Brierfield Coal & Iron Company under said mortgage or deed of trust, except as hereinafter stated; that this defendant is informed and believes and states that the statements in the second section of said bill, giving names of the alleged owners of the bonds issued by the Brierfield Coal & Iron Company at the time said bill was filed and the number of bonds owned by each, is not correct; that when said bill was filed this defendant was the holder of twenty bonds, duly issued by said Brierfield Coal & Iron Company under and in accordance with said mortgage or deed of trust, of which said Exhibit "A" is a copy; that the said bonds so held by this defendant when said bill was filed are respectively numbered 78, 204, 205, 206, 207, 359, 361, 386, 387, 388, 389, 437, 438, 439, 440, 441, 442, 450, 451, and 452; that said twenty bonds are each for the payment of one thousand dollars, each dated October 1st, 1882, each in the form prescribed in said mortgage deed of trust, each payable on the first day of October, 1912, to Preston B. Plumb, or bearer, at the office of said company in Brierfield, or at the office of the said company in the city and State of New York, in gold coin of the United States, with coupons for semi-annual interest, at the rate of six per cent. from the
645 date, payable on the first days of April and October of each year; that seven of said bonds have attached to each one coupon for interest past due and unpaid, and thirteen of said bonds have attached to each two coupons past due and unpaid.

That this defendant obtained and became the holder of the said twenty bonds in good faith and for a valuable consideration, and he is now the *bona fide* holder of said twenty bonds; that on the

15th day of September, 1886, Thomas J. Peter and the said Brierfield Coal & Iron Company were indebted to this defendant in the sum of fifteen thousand dollars; that on the 15th day of September, 1886, this defendant received from the said Thomas J. Peter, as evidence of said debt of fifteen — dollars, three bills of exchange as follows: One bill of exchange for six thousand dollars, payable on the 15th day of September, 1887, at the Commercial Bank of Selma; one other bill of exchange for six thousand dollars, payable on the 15th day of March, 1888, at the Commercial Bank of Selma, and the third bill of exchange for three thousand dollars, payable on the 15th day of September, 1888, at the Commercial Bank of Selma; that each of said bills of exchange was drawn by Thomas J. Peter and payable to the order of James T. Fitzgerald, and endorsed by said Brierfield Coal & Iron Company, and dated September 15th, 1886; that said three bills of exchange are unpaid and are the property of this defendant, and are just and valid debts of the said Brierfield Coal and Iron Company and of said Thomas J. Peter;

646 that when said debt evidenced by said three bills of exchange was created this defendant recovered from said Thomas J. Peter said twenty bonds as collateral security for the payment of said debt of fifteen thousand dollars, and this defendant holds said twenty bonds as collateral security for the payment *for* the said debt, now evidenced by said three bills of exchange, so this defendant says that this defendant is the *bona fide* holder and owner of said twenty bonds for the purpose aforesaid; that this defendant became the holder of said bonds in good faith and for a valuable consideration, before maturity, and for the purpose aforesaid; and this defendant is informed and believes and so states that said twenty bonds, before they were delivered to this defendant, were the property of the said Thomas J. Peter.

This defendant is informed and believes and therefore states that said Brierfield Coal & Iron Company purchased from W. D. Carter and Kearsley Carter a large amount of real estate, including all the real estate in Brierfield belonging to said company and the furnace of the company, and that said W. D. Carter and Kearsley Carter had a mortgage lien on all the real estate so sold by them to said company, and that said mortgage lien is not fully saitisfied, but this defendant is not informed as to what balance is due or unpaid of said mortgage debt; that this defendant has no knowledge or information as to the other matters or things stated in the second section of said bill except as hereinafter stated; that this defendant is advised by counsel and informed and believes and therefore states that

647 said Preston B. Plumb has no lien on any of the said property of said Brierfield Coal & Iron Company covered by said mortgage or deed of trust to said Plumb for or on account of the said debt of $27,500.00, mentioned in the second section of said bill, or for or on account of any debt of said company for which said Pumb is the surety of said company; and this defendant, on the advice of counsel and on information and belief, states and charges that the said mortgage deed of trust, of which Exhibit "A" to the bill is a copy, is a prior, superior, and paramount lien on all the property

covered by said mortgage or deed of trust to all other debts or claims stated in said bill, except the balance owing on said mortgage to said W. D. Carter and Kearsley Carter and excepting such liens as have been retained by vendors on property sold to said company since the first day of September, 1882.

And this defendant, on information and belief and advice of counsel, denies that said Thomas J. Peter has any lien on the property covered by said trust deed, of which said Exhibit "A" is a copy, for or on account of any debt of said company for the payment of which said Peter is or was the surety of said company.

SECTION 3. This defendant, on information and belief and the advice of counsel, denies that said John G. Murray or said Thomas J. Peter has any lien on any of the property of said Brierfield Coal & Iron Company for or on account of any of the matters stated in the third section of said bill of complaint.

SECTION 4. This defendant states, on information and belief
648 and the advice of counsel, that this court has no power or jurisdiction on the said bill of complaint or any proceeding thereunder to authorize the complainant or any other person to encumber the property of the Brierfield Coal & Iron Company by mortgage or receiver's certificates or other certificates and make such lien or encumbrance superior to the lien created by the said deed of trust for the purpose of paying any debt which is not now a superior lien to said deed of trust; and this defendant charges, on information and belief and the advice of counsel, that it is contrary to equity and good conscience and the law to pay debts having no lien before the payment of debts secured by a first lien, and that *bona fide* holders of bonds duly issued under said deed of trust ought not to be hindered and delayed for the benefit of creditors without a lien or to enable the said complainant to carry on a business which will endanger the security of said *bona fide* holders given to them in said deed of trust, and this for a mere possibility of benefit to the stockholders of said Brierfield Coal & Iron Company, who, according to the averments in said bill, have not paid in full their stock subscriptions. This defendant is informed and believes and states that it will not be for the interest of the creditors of the said Brierfield Coal & Iron Company to authorize the complainant to borrow money for any purpose on the faith of the property mortgaged to him; that to do so would increase the indebtedness rather than to diminish it; that if all of said bonds have been issued to *bona fide* holders, as stated said bill, the annual interest on said bonds
649 will be thirty thousand dollars, one-half payable semi-annually; that complainant resides in a distant State and is almost constantly engaged in his duties as Senator in the United States Senate; and this defendant states on information and belief that complainant would not be able to carry on the business in which said company was engaged and pay the annual expenses of the business and the interest on said bonds from year to year; that the business of mining and making iron ore into pig iron is very expensive and hazardous, and men of means and skill in that business have in many instances lost large fortunes in the business by

the depressions and fluctuations in the market value of pig iron and by the accidents and casualties to which the business is constantly exposed.

SECTION 5. This defendant admits and states that the credit of said Brierfield Coal & Iron Company has been destroyed, and that said company is unable to carry on its business; and this defendant charges and states on information and belief that the debts of said company can never be paid out of its assets, even if the business of the company should be continued under the management and control of the complainant; and this defendant, on information and belief, admits that no bond-holding creditor has demanded of complainant the foreclosure of said deed of trust, and that complainant did demand and take possession of the mortgaged property as stated in the fifth section of said bill; and this defendant, on in-
650 formation and belief, admits and states that *that* the complainant has appointed John G. Murray his general agent, as stated in the said bill, and the said Murray is qualified as stated in said fifth section of said bill of complaint.

But this defendant, on information and belief, denies the other matters stated in said fifth section of said bill of complaint.

And having answered fully, so far as he is advised it is material for him to answer, this defendant prays to be hence discharged with his reasonable costs in this behalf expended.

PETTUS & PETTUS,
Solicitors for said Defendant.

THE STATE OF ALABAMA, }
Perry County. }

I, Charles H. Seawell, a notary public in and for said county, do hereby certify that James T. Fitzgerald, the defendant named in the foregoing answer, who is personally known to me, personally came before me on this day, and being duly sworn deposes and says that the matters and things stated in the foregoing answer, when stated of his own knowledge, are true, and when stated as on information and belief believes the same to be true.

JAMES T. FITZGERALD.

Sworn to and sbscribed before me at my office, in Perry county, in the State of Alabama, as witness my hand and official seal the *the* 2nd day of September, A. D. 1887.

[SEAL.] CHARLES H. SEAWELL,
Notary Public.

Filed this 5th day of Sept., A. D. 1887.

J. W. DIMMICK, *Clerk.*

651 *Answer of Caswell C. Huckabee to the Original & Amended Bills.*

In the Circuit Court of the United States for the Middle District of Alabama.

PRESTON B. PLUMB
vs.
THE BRIERFIELD COAL AND IRON COMPANY.

The separate answer of Caswell C. Huckabee.

This respondent, saving and reserving to himself all manner of objection by demurrer or otherwise to the manifold irregularities and imperfections in the original and amended bills of complaint filed in this cause, for answer thereto says:

1. He admits the residence of the parties as charged in the first section of the original bill; admits that the Brierfield Coal & Iron Company is a corporation under the laws of Alabama with its principal office at Brierfield, and that Thomas J. Peter is the president thereof; that the City National Bank of Selma, is a banking corporation under the laws of the United States, located and doing business at Selma, Alabama; that the Alabama National Bank of Birmingham, is a corporation located at Birmingham, chartered under the laws of the United States; that the Commercial Bank of Selma is a corporation under the laws of Alabama and doing business at Selma, Alabama.

Further answering said first section of said original bill this respondent says that prior to said 4th day of May, 1882, this respondent and Robert L. McCalley were the owners of about six hundred (600) acres of land upon which the Brierfield rolling mills are located and about four hundred acres more, which last-men-
652 tioned lands are about three miles from the said rolling mill; that at said time there was located on said six hundred-acre tract a rolling mill and some tenement houses which now form a part of the property of the Brierfield Iron and Coal Company; that respondent was the owner of three-fourths and Robert L. McCalley was the owner of one-fourth of the property above described, but the title thereto was in this respondent.

Respondent further says that about the middle of February, 1882, Thomas J. Peter bought of respondent and said McCalley said six hundred acres of land, with the buildings thereon and the coaling privelege on said above-mentioned four-hundred acre tract of land, at and for the sum of forty-five thousand dollars, and, according to the respondent's recollection, he executed to said Thomas J. Peter deeds to said above-described lands, reserving to himself all interest in said four-hundred — tract except the coaling priveleges thereon.

Respondent further says that the said Thomas J. Peter paid to respondent and said McCalley the sum of twenty-five thousand dollars in cash on account of said purchase, leaving due to respondent and said McCalley a balance of twenty thousand dollars, which the said Peter failed to pay.

Respondent further says that some time in the latter part of April or the first part of May, 1882, the said Peter still being indebted to respondent and said McCalley as aforesaid, an agreement was entered into between the said Peter, said McCalley, and respondent by
653 which the said Peter, the said McCalley, and respondent should form a joint stock company, to be known and called the Brierfield Coal & Iron Company, for the purposes mentioned in the original bill and by which respondent and said McCalley were to put into said Brierfield Coal and Iron Company the twenty thousand dollars balance due from said Peter to respondent and said McCalley as aforesaid. By the said agreement the said McCalley and respondent were to receive from said Brierfield Iron & Coal Company twenty thousand dollars in the paid-up stock of said company and twenty thousand dollars *and twenty thousand dollars* of the first-mortgage bonds of said company in lieu of said twenty thousand dollars balance which the said Peter owed to McCalley and respondent on the said purchase, as hereinbefore fully set out; that the property belonging to said company was to consist of the lands and coaling privileges sold to said Peter by this respondent and said McCalley and of a large amount of coal and iron ore and timber lands which said Peter owned at that time.

Respondent further says that in pursuance of said agreement the said Peter, the said McCalley, and this respondent on or about the 4th day of May, 1882, filed in the probate court of the county of Bibb the papers which resulted in the formation of the Brierfield Coal and Iron Company, as shown in the original bill, except that, according to the recollection of this respondent, the capital stock of said corporation was fixed at five hundred thousand dollars in five thousand shares of one hundred dollars each instead of seven
654 thousand five hundred shares as stated in the original bill; that the said Peters, the said McCalley, and respondent were appointed as commissioners to open book- of subscription to the stock of said corporation.

Respondent further says that Thomas J. Peter and others subscribed, according to the recollection of respondent, to all of said stock, except twenty thousand dollars of said stock, which was to belong to respondent and said McCalley. This respondent admits that Thomas J. Peter was a stockholder in said company, but does not recollect the amount of his subscription; he admits that George I. Seney was also a subscriber to the amount stated in the original bill and that Justin S. Morrill was also a stockholder to the amount as stated in the original bill. This respondent was under the impression at the time, and is still of that belief, that the only stockholders in said company up to the 4th day of September, 1882, were the said Thomas J. Peter, the said George I. Seney, the said Samuel W. Thomas, the said Justin S. Morrill, the said Robert L. McCalley, the said Preston B. Plumb, and this respondent. And respondent has no recollection of ever hearing or being informed that Mrs. E. A. Peter or Mrs. C. S. Plumb owned any of the stock of said company until the conveyance of July, 1887, attach- as an exhibit to the amended bill, was executed. Respondent avers that one hundred

and fifty shares of said stock were fully paid for by him, and that fifty shares of said stock were fully paid for by said Robert L. McCalley on or about the 8th day of May, 1882, in carrying out
655 the said agreement, heretofore referred to, between the said Peter, the said McCalley, and respondent. This respondent is not informed, and has no recollection, as to the truth of the statement that the subscription of Plumb and Hood was in fact made for Mrs. Carrie S. Plumb, and does not admit the same, but calls for proof. Respondent is not informed, and has no recollection, of the truth of the statement that C. S. Plumb, wife of complainant, — to the stock of said company as an investment for the benefit of her statutory estate, and that the payments made thereon were made from moneys belonging to her separate estate, and does not admit the same, but calls for proof. Respondent is not informed or has no recollection as to the truth of the statement that the certificates of stock subscribed by said Plumb and Hood were issued to said C. S. Plumb, and does not admit the same, but calls for proof. Respondent does not admit that Preston B. Plumb and Calvin Hood never became owners of said stock or any stock in said corporation, but avers his recollection to be that the said Plumb was among the original stockholders in said company. Respondent has no information or no recollection of ever being informed of the transfers of the stock of said Thomas J. Peter to the persons named in the original bill, and does not admit the same, but calls for proof. Respondent has no information or no recollection of ever being informed that the said George I. Seney has increased his stock and divided the same, as charged in the bill, and does not admit the same, but calls for proof.

Respondent has heard the said John G. Murray say that he
656 (Murray) was the owner of six shares of the stock of said company, but does not admit that said Murray is the owner of said paid-up stock, and calls for proof. Respondent has no information or does not recollect ever being informed as to the payment for stock as charged in the bill to be shown by the books of said company, does not admit the same, and calls for proof; but respondent avers that he paid for (in full) one hundred and fifty shares of said stock, and said McCalley fully paid for fifty shares of said stock as hereinbefore shown.

Respondent admits that the stock in the hands of the present owners is liable to be assessed for the payment of any amount due thereon, but avers that nothing is due on the stock of this respondent and on the stock of said McCalley, the same having been paid for by the $20,000.00 balance due on the property sold by respondent and said McCalley to said Peter in accordance with the agreement hereinbefore set out, and respondent avers that he has now a receipt, a copy of which is hereto attached as Exhibit A and made a part hereof, showing that he has fully paid for said stock, and said McCally has a similar receipt.

Respondent admits that bonds to the extent of five hundred thousand dollars were issued—that is to say, to the amount of the stock of said corporation—but respondent denies that said bonds were

issued under the circumstances or under the necessity or for the purposes set out in the original bill, and denies that the same were sold to the stockholders except as herein shown; and this respondent avers that it was a part of the agreement which was en-
657 tered — by the said Thomas J. Peter, Robert L. McCalley, and this respondent that the said company was to have a cap-tal stock of five hundred thousand dollars, according to the recollection of respondent, and that when the company should be organized the same amount, viz., five hundred thousand dollars of bonds, should be issued. It was further agreed that the said bonds should be issued to the holders of the capital stock *pro rata* in proportion to the amount of stock held and paid for by each, and that under this understanding and agreement respondent was to receive fifteen thousand dollars in stock and fifteen thousand dollars in bonds, and that said Robert L. McCalley was to receive five thousand dollars in stock and five thousand dollars in bonds of said company; and respondent avers that in accordance with said agreement this repondent did receive the receipt, a copy of which is hereto attached as Exhibit A, showing that he had fully paid for fifteen thousand dollars of stock, and that heretofore, viz., on or about the first day of January, 1886, respondent received from Thomas J. Peter or John G. Murray, president and secretary, respectively, of said Brierfield Iron and Coal Company, thirteen thousand dollars in *in* the bonds of said company; that there was a controversy between said company and one Collins as to a part of the lands sold *sold* by respondent and said McCalley to said Peter, and the bonds of respondent were held until said controversy between said company and said Collins was settled, when the said company, claiming that they had been put to
658 the expense in said controversy, retained two of the bonds which were to have been delivered to this respondent.

Respondent avers that he paid nothing for said — except as hereinbefore stated. Respondent further says that said company issued to said McCalley a receipt showing that he had fully paid for said five thousand dollars of stock, and respondent is informed that the company recognizes the right of said McCalley to said five thousand dollars of bonds, but for some reason fails to turn the same over to said McCalley; that respondent sold the said thirteen thousand dollars of bonds so delivered to him to one J. T. Fitzgerald, one of the defendants to this cause, and respondent is informed that said Fitzgerald afterwards sold the same to said Thomas J. Peter, and that said Peter is now the real owner of said bonds. Respondent further avers that, as he is informed and believes and states, the said bonds were issued by said company to the other stockholders in proportion to the stock held and paid for by each under and in accordance with the said agreement and understanding hereinbefore mentioned, and for no other consideration whatsoever; and respondent denies, on information and belief, that any money went into the treaury of said company for said bonds except as hereinbefore shown; and respondent avers, on like information and belief, that the said deed of trust to said complainant of date September 1st, 1882, and said

paper executed in July, 1887, as shown by Exhibit A[1] to the
659 amended bill to secure said bonds, had no other consideration than the issue of stock and bonds, as hereinbefore shown, and this respondent avers the above to the best of his knowledge, information, and belief.

SECTION 2. Respondent, in answer to said second section, says that the bonds aforesaid were issued, to the best of his knowledge, information, and belief, under the circumstances hereinbefore stated, and the holders thereof as named in the bill this respondent admits to be correct, except as to Fitzgerald, who, as orator is informed, has sold his bonds to said Thomas J. Peter, and except as to Mrs. Pomeroy, as to whom this respondent has no information, and calls for proof. This respondent admits that said McCalley has never received his bonds, but denies that McCalley is indebted for the same, he having fully paid for the same and his five thousand dollars of stock in the same way in which respondent paid for his bonds and stock, viz., by the debt of twenty thousand dollars which said Peter owed to respondent and said McCalley.

This respondent admits that there are liens on said property of said company paramount to the said deeds of trusts. He admits that the said company bought from Wm. D. Carter & K. Carter, Jr., the lands mentioned; admits that something is due thereon, and that the Carters have a first lien on the property so bought for the payment of the amount due thereon, and that said lien is paramount to said deeds of trust. He admits the purchase of the engine from the Philadelphia —, the purchase of lands from the State of Alabama and from the estate of Burwell B. Lewis, and admits that
660 each vendor has a paramount lien for the payment of the money due; but this respondent is not informed of the amounts due to each, but he denies, on information, that anything is due to laborers or other employees; and respondent avers that he and said McCalley have a lien on the lands and coaling privileges which they sold to said Peter for the unpaid purchase-money due to them, and he avers that such lien is paramount to said deed of trust. Respondent is not informed of the truth of the other allegations in said paragraph or section *section* and does not admit the same, but calls for proof; and respondent denies, as he is advised, that either of said alleged claims have any priority over the claims of this respondent and said McCalley to be paid the said balance of purchase-money out of the said property so purchased from them as aforesaid.

SECTION 3. Respondent is not informed as to the truth of the statement in said third section and does not admit the same, but calls for proof; and respondent denies, as he is advised, that either of the alleged claims has any priority over the claims of this respondent and said McCalley to be paid the balance of the purchase-money out of the said property so purchased. Respondent denies that the deed of trust of Sept. 1st, '82, or the paper executed July, 1887, conveys the unpaid stock of said company.

SECTION 4. This respondent admits the allegations of the 4th section of the original bill.

SECTION 5. This respondent admits that complainant demanded the property of said company as alleged. Respondent does
661 not know as to the necessity for borrowing twenty-five thousand dollars, but admits that the company is embarrassed. He admits the appointment of John G. Murray, and that he is a good business man. He is not informed and calls for proof as to the other allegations of the said 5th section and calls for proof of all matters alleged in said bill which have not been herein admitted to be true. And now, having fully answered the said original bills, this respondent prays that his answer may be treated as a cross-bill, and that a lien be declared in his favor for his part of the balance of the purchase-money due for the lands so purchased from this respondent and said McCalley by said Peter; and respondent prays for general relief, & he will, as in duty bound, ever pray, &c.

WATTS & SON,
Sol's for Respondent, Caswell C. Huckabee.

EXHIBIT A.

"BRIERFIELD, *May 8th*, 1882.

Received from Caswell C. Huckabee, Esq., the sum of fifteen thousand dollars, being payment in full on his subscription to the capital stock of the Brierfield Coal & Iron Company.

$15,000.00. T. J. PETER,
Pres't B. C. & I. Co."

THE STATE OF ALABAMA, }
County of Montgomery. }

Before me, James Jackson, a notary public and *ex officio* a justice of the peace, personally appeared Caswell C. Huckabee, who, being sworn, deposes and says that the matters stated herein as facts are true and correct, and that the matters herein stated on information and belief are true to the best of his knowledg-, information, and belief.

C. C. HUCKABEE.

Sworn and subscribed before me this 5th day of Oct., '87.

JAMES JACKSON,
Notary Public, ex Off. J. P.

Filed the 8th day of Oct., 1887.

J. W. DIMMICK, *Clerk.*

662 *Answer of Robert L. McCalley to Original and Amended Bills.*

In the Circuit Court of the United States for the Middle District of Alabama.

PRESTON B. PLUMB
vs.
THE BRIERFIELD COAL & IRON COMPANY. } # 103.

The separate answer of Robert L. McCalley.

This respondent, saving and reserving to himself all manner of objection, by demurrer or otherwise, to the manifold irregularities and imperfections in the original and amended bills filed in this cause, for answer thereto says—

That he has read the answer of Caswell C. Huckabe filed in this cause; that the same is true to the best of the knowledge, information, and belief of this respondent, and he adopts the said answer as his own, and says further that from the organization of the company until the spring, 1887, this respondent was almost continuously in the employ of said Brierfield Coal and Iron Company; that, having no convenient place to keep the stock and bonds of said company belonging to him, this respondent did not obtain the same from said company and did not call for the same until after he quit the employment of said company; that in the fall, 1886, the said Thomas J. Peter asked this respondent if he did not desire to sell his (respondent's) bonds, the said Peter stating that he was not satisfied with the six per cent. he was getting on his bonds, and that he was going to sell his bonds; that the said Peter then asked this respondent to let him (Peter) sell the bonds of respondent, saying that he desired to get as many bonds as he could to sell as an inducement for the banks in New York to buy the bonds; that respondent consented to give said Peter authority to sell said bonds of
663 respondent, and at the request of said Peter this respondent wrote out and gave to said Peter the said authority, and the said Peter has the said authority in his possession; that in the latter part of the winter, 1886–'7, this respondent was informed by the said Peter that he (said Peter) had not sold the bonds, and respondent then asked for a receipt for said bonds, but the said Peter refused to deliver said bonds or a receipt therefor, stating to respondent that said bonds and said written authority to sell the said bonds were in the safe of said Brierfield Coal & Iron Company, and that John G. Murray, secretary and treasurer of said company, had charge of said papers and bonds and safe, and that the said Murray was absent. Respondent further avers that at the time of the execution of said instrument in writing of July, 1887, attached as exhibit to the amended bill, this respondent, through his agent, Caswell C. Huckabee, demanded of said Thomas J. Peter, president as aforesaid of said company, the said five thousand dollars of bonds belonging to this respondent, and the said Peter, as such president,

refused to give said bonds to said Huckabee for the alleged reason that this respondent had not fully paid up his subscription to the stock of said company. This respondent further avers that he has fully paid up his stock in the said company, as shown by a copy of the receipt therefor issued to him by said Thomas J. Peter as president of said company, hereto attached as Exhibit A and made a part thereof.

Respondent further avers that he has never been notified of
664 any assessment on his stock in said company and -vers that he is entitled to said five thousand dollars of bonds in accordance with the agreement and understanding so fully set out in the answer of the said Caswell C. Huckabee to the original and amended bills filed in this cause. And this respondent, having fully answered said original and amended bills, prays that this answer may be treated as a cross-bill, and that this court will order the complainant to turn over to this respondent the said five thousand dollars of bonds and the interest thereon, and that a lien be declared in his favor on the lands so sold to said Peter by said Huckabee and this respondent for the payment of his share of the said balance of purchase-money due; and respondent prays for general relief, and he will ever pray, &c.

WATTS AND SON,
Sol's for Respondent, Robert L. McCalley.

EXHIBIT A.

BRIERFIELD, *May 8th*, 1882.

Received from Robert L. McCalley, Esqr., the sum of five thousand dollars, being payment in full on his subscription to the capital stock of the Brierfield Coal and Iron Company.

T. J. PETER,
Pres't B. C. & I. Co.

THE STATE OF ALABAMA, }
County of Montgomery. }

Before me, James Jackson, a notary public & *ex officio* a justice of the peace in and for the said county of Montgomery and State of Alabama, personally appeared Robert L. McCally, and, being sworn, deposes and says that the matters stated as facts in the foregoing answer are true, and the matters stated on information and belief are true to the best of his information and belief.

R. L. McCALLEY.

Sworn to and subscribed before me this 5th Oct., 1887.

JAMES JACKSON,
Notary Public & ex Off. J. P.

Filed this 8th day Oct., 1887.

J. W. DIMMICK, *Clerk.*

665 In the Circuit Court of the United States for the Middle District of Alabama.

PRESTON B. PLUMB, as Trustee, Complainant,
vs.
THE BRIERFIELD COAL AND IRON COMPANY and Others, Defendants.
103. On the Equity Side of said Court.

The separate answer of The Commercial Bank of Selma, a corporation, one of the defendants, to the bill of complaint of Preston B. Plumb, as trustee, complainant.

This defendant, saving and reserving to itself all right and benefit of exception to the said bill of complaint, for answer thereto, or to so much and such parts thereof as it is advised it is material to answer, says it is informed and believes and so states as follows:

SECTION 1. That on or about the 4th day of May, A. D. 1882, such proceedings were had and completed by and before the probate judge of Bibb county, in the State of Alabama, that a corporation was duly created and organized under the corporate name of the Brierfield Coal & Iron Company, with its domicile in said Bibb county, in accordance with the statutes of this State in such case made and provided; and afterwards, by virtue of an act of the General Assembly of the State of Alabama, entitled "An act to amend and ratify the charter of the Brierfield Coal & Iron Company of Bibb county, Alabama," approved December 4th, 1884, the charter of said company was ratified and amended, and amongst other things it was thereby *executed* "that said company is hereby declared to be a body corporate under the laws of this State, by its present name and style."

SECTION 2. That on the first day of September, A. D. 1882,
666 the said Brierfield Coal and Iron Company, being then and there a corporation and thereto duly authorized by law *hereunto* the mortgage deed of trust to Preston B. Plumb, trustee, as stated in said bill of complaint; that the same was duly executed for said company by the authority of the stockholders thereof, duly given and expressed in and by a resolution adopted at a regular meeting of said stockholders called for that purpose, and of which more than thirty days' notice had been given by publication thereof in a newspaper published in said Bibb county, and after compliance with all the requirements of law in such cases; that said mortgage deed of trust — executed also by authority of the board of directors of said company, duly given in a resolution adopted at a meeting of said board authorizing the president of the company to execute that identical mortgage deed of trust which was then and there copied and set forth in full in the minutes of the proceedings of said meeting; that said mortgage deed of trust was duly signed and executed for said company by Thomas J. Peter, who was then the president thereof, under the corporate seal of said company, and was attested by the secretary thereof, and the same was also signed by the said

Preston B. Plumb, named therein, in acceptance of the trust thereby created; that the execution of said mortgage deed of trust was duly acknowledged for said company by the said Thomas J. Peter, the president thereof, in said Bibb county, before Jesse W. Mahon,
667 who was then and there a justice of the peace in and for said county and who duly certified the acknowledgement thereof on the 27th day of September, 1887; that said mortgage deed of trust was shortly thereafter *was* duly recorded in the counties respectively of Bibb, Chilton, and Shelby (wherein the property conveyed was and is situate), in this State, as appears by the copy thereof attached to the said bill of complaint, marked Exhibit A, and that said Exhibit A sets forth a substantial copy of said mortgage deed of trust.

SECTION 3. That under and in accordance with the provisions of said mortgage deed of trust the said Brierfield Coal & Iron Company duly executed, issued, sold for valuable consideration, and delivered sundry bonds, each of the denomination of one thousand dollars, with interest coupons attached for semi-annual interest, at the rate of six per cent. per annum, each bearing date the first day of October, A. D. 1882, and of the form and tenor and effect prescribed in said mortgage deed of trust; that this defendant does not know and is not informed and cannot state the number of said bonds so issued, now the person to whom nor the circumstances under which they were issued, except as hereinafter set forth.

SECTION 4. That afterwards and in accordance with the terms of said original mortgage deed of trust, providing for further assurances, the said Brierfield Coal and Iron Company, on, to wit, the 29th day of July, A. D. 1887, for the purpose of further securing the payment of the 500 bonds therein mentioned, executed and
668 delivered to said Preston B. Plumb, as such trustee, another and supplemental mortgage deed of trust, dated the 29th day of July, A. D. 1887. The said last-mentioned mortgage deed of trust was duly authorized by the board of directors of said company by resolution thereof adopted at a regular meeting of said board and duly entered on the minutes of the proceedings thereof, and was duly executed for said company by Thomas J. Peter, the then president thereof, under the corporate seal of said company, and duly attested by the secretary thereof, and was also attested by two subscribing witness- thereto, and the same was shortly afterwards probated and duly recorded in the counties of Bibb, Chilton, and Shelby, as appears in and by the copy of said last-mentioned mortgage deed of trust attached to said bill of complaint and marked Exhibit A, and whereof said Exhibit A sets forth a substantial copy.

SECTION 5. That on, to wit, the 1st day of August, 1887, the said Preston B. Plumb, as such trustee, under and in accordance with the provisions in that behalf in the said mortgage deeds of trust contained, demanded of the said Brierfield Coal & Iron Company possession of all the property, real and personal, covered by said mortgage deed of trust or either of them, and on the 2ond day of August, 1887, the said Plumb, as such trustee, with the consent of

said company, took actual possession of all said property, real and personal, and has ever since held and still holds possession thereof, as trustee, under said mortgage deed of trust.

SECTION 6. That at the time of the filing of said bill of complaint this defendant was, and long had been, the holder, for value, of thirty-eight (38) of the said mortgage bonds of the Brierfield
669 Coal and Iron Company, hereinabove referred to and described, each for the sum of $1,000, and payable to bearer, and coupons attached for semi-annual interest at the rate of six per cent. per annum, and each duly authenticated by the certificate of the said trustee endorsed thereon, the serial numbers whereof, respectively, as follows: Nos. 195, 196, 197, 198, 199, 200, 201, 202, 203, 235, 236, 237, 238, 239, 240, 320, 321; 322, 323, 371, 372, 373, 434, 435, 436, 443, 444, 445, 446, 447, 448, 453, 454, 455, 456, 457, 458, and 283; and this defendant still holds all of the same except three, namely, Nos. 446, 447, 448, which have been delivered to John G. Murray, as hereinafter stated.

That said 38 bonds were by this defendant purchased and acquired as collateral security for the payment of money by this defendant from time to time loaned to the following-named parties at the time said bonds were respectively delivered to this defendant and on the faith and security of said bonds; and at the time of the filing of said bill of complaint said bonds were held to secure the payment of the following-described indebtedness for money theretofore so loaned as aforesaid, namely:

(1.) The certain indebtedness of said Brierfield Coal and Iron Company and said Thomas J. Peter to this defendant, then aggregating the sum of $22,500.00, and evidenced by the several promis-ory notes of said company and said Peter to this defendant therefor, dated at different times from, to wit, Feb'y 12th, 1887, to July 28th, 1887, and maturing at different dates from, to wit, August 15th, 1887, to January 31st, 1888.

(2.) The certain other indebtedness of said Brierfield Coal and Iron Company and said Peter and John G. Murray to this defendant, then aggregating the sum of $5,000.00, and evidenced by
670 the two several promis-ory notes of said company of $2,500.00 each, and endorsed by said Peter and Murray to this defendant, and due respectively on, to wit, Sept. 13 and 21st, 1887.

(3.) The certain other indebtedness of said John G. Murray to this defendant for the aggregate sum of $1,000.00, and evidenced by the two several notes of said Murray and one F. F. Gage to this defendant therefor for $500.00 each, and due, to wit, August 26th, 1887, and November 26th, 1887, respectively.

That since the filing of said bill one of the said $2,500.00 notes of said company, endorsed by said Peter and Murray, has been paid, and this defendant thereupon delivered to said John G. Murray thre- of said bonds, which had been received by this defendant from said Murray, as collateral therefor, namely, Nos. 446, 447, and 448.

That the other said $2,500.00 note made by said company and *and* endorsed by said Peter and Murray to this defendant, with in-

terest thereon, remains unpaid, and is secured by the specific pledge of thre- of said bonds, also received by this defendant from said Murray, and now held by this defendant and numbered respectively as follows: Nos. 371, 372, 373; that — the said $1,000.00 indebtedness of said Murray and Gage to this defendant $500.00 remains unpaid, and is secured by the specific pledge of one of said bonds received from said John G. Murray and now held by this defendant and numbered 283.

That the said indebtedness of $22,500.00 of the said company and the said Thomas J. Peter above mentioned, with interest thereon, remains wholly unpaid, and this defendant holds as collateral security for the payment thereof twenty-seven (27) of said bonds received by this defendant from said Thomas J. Peter, and numbered as follows: Nos. 195, 196, 197, 198, 199, 200, 201, 202,
671 203, 235, 236, 237, 238, 239, 240, 434, 435, 436, 443, 444, 445, 453, 454, 455, 456, 457, and 458.

That by the terms of the pledge and hypothecation of said bonds, expressed in writing in each case, the same were made and are liable not only for the particular debts for which the same — particularly pledged, but also for any and all further and other debts and liabilities of the pledges respectively to this defendant, whether as principal or surety; and this defendant holds four of said bonds, namely, Nos. 320, 321, 322, and 323, so pledged by the said John G. Murray as additional security for the debts and liabilities to this defendant of said Murray, above set forth.

That each and all of said 35 bonds above described so acquired and still held by this defendant as aforesaid were purchased and acquired by this defendant in good faith and in the usual and regular course of business and for a then personal valuable consideration paid and furnished by this defendant, namely, money loaned by this defendant to the said Brierfield Coal and Iron Company, Thomas J. Peter, and John G. Murray, respectively, on the faith and security of said bonds at the time the same were *were* by them delivered to this defendant as collateral security for the payment of said loans, and without any knowledge, information, or notice to or on the part of this defendant of any default to said bonds or any of them, in whole or in part, or any defect, or infirmity whatsoever, at law or in equity, in the title of said parties to the bonds by them respectively negotiated, or any of them, if any such there be; and this defendant alleges that the lien of the above numbers and described (35) thirty-five bonds is prior and superior to any and all other liens whatsoever upon all the property of every sort
672 and description of the said Brierfield Coal and Iron Company, real and personal, including the separate franchises and including any and all amounts and balances due from its stockholders on account of unpaid subscriptions to the capital stock thereof, except such bonds of the same issue, if any there be, which may be in the hands of *bona fide* holders for valuable consideration, and except such liens for unpaid purchase-money, if any such there be, as may have been reserved by the vendors of particular prop-

erty purchased by the said Brierfield Coal & Iron Company, and except also liens for taxes, if any there be.

SECTION 7. And this defendant is informed and believes and so states that the original subscription to the capital stock of said Brierfield Coal and Iron Company were by subscribers and in amounts as follows:

Thomas J. Peter and associates	$120,000 00
Esther A. Peter	50,000 00
R. M. McCalley	5,000 00
C. C. Huckabee	15,000 00
George I. Seney and associates	75,000 00
Carrie S. Plumb	50,000 00
Plumb & Hood	50,000 00
Justin S. Morrill	10,000 00
Total	375,000 00

That the said George I. Seney and associates consists of said George I. Seney, Calvin S. Brice, and Samuel Thomas, and that the above subscriptions of "George I. Seney and associates" *was* made for himself and associates by the said Samuel Thomas; that the board of
673 directors of said Brierfield Coal and Iron Company from time to time duly called installments upon said subscriptions to capital stock, namely, at one time 20%, at another time 6%, and at another time 30%, making a total of 57% thereof so called; that some of said subscribers paid said calls and others paid only a part of the same and are liable to pay the balance, and some or all of said subscribers owe also the remaining 43% of their respective subscriptions to stock and are liable for the same; that this defendant does not know and cannot state how much has been paid *or amount* of said subscriptions to stock and how much remains due and unpaid on account thereof by said subscriptions respectively; but this defendant is advised by counsel and believes and states that said unpaid subscriptions to capital stock constitute a part of the trust fund appropriated by said mortgage deeds of trust to the payment and security of the said mortgage bonds, and ought to be called in, collected, enforced, and applied accordingly.

SECTION 8. That this defendant is informed and believes and so states that it is provided in and by said original mortgage deed of trust and set forth on the face of each of said bonds that said bonds may be registered on the books of said Brierfield Coal and Iron Company and be thereby made payable to a particular individual and transferable only on the books of said company, and *and* that bonds so registered and payable to a particular individual may be again registered and be made thereby payable to
674 bearer and transferable and negotiable by delivery; that — the above-described 35 bonds still held by this defendant twelve (12) of them, namely, numbers 434, 435, 436, 443, 444, 445, 453, 454, 455, 456, 457, and 458, were never so registered, and twenty-two (22) of them, namely, Nos. 195, 196, 197, 198, 199, 200, 201, 202, 203, 235, 236, 237, 238, 239, 240, 370, 371, 372, and 373, 320, 321, 322, and

323, were so registered and made payable to individuals, and were afterwards, and before this defendant acquired the same, again registered and thereby made payable to bearer, so that each and all of the above-described 34 bonds were at the time of their delivery payable to bearer and negotiable — delivery.

And the remaining bond of said 35 bonds, namely, No. 283, held by this defendant, is registered and payable to the order of said John G. Murray; that sundry of the series of said bonds issued under said mortgag- are held by or for sundry of the above-named stockholders, who owe balances as aforesaid on their subscription to stock, and said bonds have been so registered as aforesaid and thereby made payable to said stockholders individually and absolutely, or to other persons for them, and made transferable only on the books of said company; and this defendant does not know and can-ot state which or how many of said bonds so registered as last aforesaid are held by any and which of said stockholders so indebted for balances of subscriptions to stock as aforesaid; that this defendant is advised by counsel, and believes and states, that such *such* stockholders should not be allowed to transfer on the books of the company such bonds as registered while their respective balances of subscriptions to stock remains unpaid, and that their respective interests in such
675 bonds so held by them respectively ought to be subjected to the payment of the said balances so due by them respectively.

SECTION 9. And this defendant, on advice of counsel, information, and belief, denies that the complainant, Preston B. Plumb, has any equitable right, endemnity, and satisfaction to the interest of $27,500.00, or any other sum, out of or on any property of the said Brierfield Coal and Iron Company by reason of the matters and things stated and set forth in section 2 of this bill of complaint, or otherwise, prior to the rights and liens thereon of this defendant and other holders of said bonds, and avers that the rights and liens of this defendant and other like holders of said bonds are prior and superior to the said alleged rights and equities of the complainant in the premises, and denies that said Thomas J. Peter is entitled in equity to be indemnified and reimbursed, as set forth in section 2 of the bill of complaint, in preference to the holders of the bonds of said company, and avers that the rights, liens, and equities of this defendant and other holders of bonds in like situation are prior and superior to the alleged rights and equities of said Thomas J. Peter in the premises, and denies that, by reason of the matters and things set forth in section 3 of said bill of complaint, or otherwise, the said John G. Murray and Thomas J. Peter, or either of them, are or is entitled in equity to be substituted to the lien of the said Carter mortgage, in said section mentioned, for their indemnity or reimbursement to the amount of money in said section 3 mentioned, or for any other amount, and avers that the said Murray and Peter are not, nor is either of them, *in*titled in equity or otherwise to any substitution or abrogation in the premises.

676 SECTION 10. And this defendant denies the necessity for and the propriety of the issuance of $25,000.00 of trustee certificates or any other amount, as set forth in said bill, and objects to

the issuance and disposition thereof as prayed for, and denies the existence of any right or authority by means of the issuance of such *issuance of such* certificates or otherwise to create a lien on said trust property (as contradistinguished from the usual and ordinary trustee's expenses in such cases) prior and superior to the vested liens and rights of this defendant and like bondholders in the premises.

And now, having fully answered said bill of complainant, this defendant prays to be hence discharged with its reasonable costs in this behalf expended.

THE COMMERCIAL BANK OF SELMA,
By R. M. NELSON, *Pt.*

PETTUS & ROY,
Sol's for the Commercial Bank of Selma.

STATE OF ALABAMA, }
Dallas County. }

Before me, Geo. W. Lewis, a notary public in and for the county and State aforesaid, this day personally came R. M. Nelson, who, being by me first duly sworn, on oath says that he is the president of the Commercial Bank of Selma, a corporation, and is duly authorized for and on behalf of said bank to make its foregoing answer, and that the matters and things therein set forth and contained when stated as of the knowledge of the defendant are true, and when stated on information and belief he believes the same to be true.

R. M. NELSON.

Sworn to and subscribed before me this 5th day of November, A. D. 1887.

GEO. W. LEWIS,
Notary Public.

Filed by leave of the court the 7th day of November, 1887.
J. W. DIMMICK, *Clerk.*

677 *Substituted Answer of Thos. J. Peter.*

In the Circuit Court of the United States for the Middle District of Alabama.

PRESTON B. PLUMB, Trustee,
vs.
THE BRIERFIELD COAL & IRON COMPANY,
THOMAS J. PETER, and Others. } In Equity. # 103.

The said Thomas J. Peter, one of the defendants in said cause, by leave of the court, amends his answer heretofore filed in said cause by striking out said answer and by filing in lieu of said answer the following:

SECTION 1. This defendant says that the Brierfield Coal and Iron

Company was organized on or about the 4th day of May, 1882; that the subscription- to the capital stock of said company were as follows:

T. J. Peter and associates	$120,000 00
E. A. Peter	50,000 00
R. L. McCalley	5,000 00
C. C. Huckabee	15,000 00
G. I. Seney and associates	75,000 00
C. S. Plumb	50,000 00
Plumb & Hood	50,000 00
Justin S. Morrill	10,000 00

That this defendant to said subscription of stock signed the name of T. J. Peter and associates and the name of E. A. Peter, who is his wife. R. L. McCalley and C. C. Huckabee each signed for himself. The name of G. I. Seney and associates was signed by this defendant for G. I. Seney, C. S. Brice, and Samuel Thomas by the direction of said Samuel Thomas. The name of C. S. Plumb, who is the wife of Preston B. Plumb, was signed by this defendant by the direction of said Preston B. Plumb. The name of Plumb and Hood
678 was signed by this defendant by the direction of Preston B. Plumb. The name of Plumb and Hood represents a partnership composed of Preston B. Plumb and Calvin Hood. The name of Justin S. Morrill was signed by this defendant by the direction of said Morrill. On this subscription thus made said corporation was organized on or about May 4th, 1882; that a few days thereafter and as of May 4th, 1882, and in — to avoid questions which might arise as to the subscriptions to the capital stock, the same amount of stock for each of the above parties, not as an additional subscription, but as a confirmation of the stock subscribed as above stated, was made as follows: Thomas J. Peter signed for himself and associates, and he also signed for his wife, E. A. Peter, by her authority; R. S. McCalley and C. C. Huckabee each signed for himself; the name of G. I. Seney and associates was signed by Samuel Thomas, one of said associates; the name of C. S. Plumb was signed by her husband, Preston B. Plumb; the name of Plumb and Hood was signed by Preston B. Plumb, one of the parties; the name of Justin S. Morril was signed by himself; that this defendant was informed by said Preston B. Plumb some time after the subscription of Plumb and Hood had been made that this subscription would be assumed and paid by his wife, C. S. Plumb; that this defendant, on his subscription of one hundred and twenty thousand dollars to the capital stock of said company in the name of himself and associates, paid the sum of eighty-three thousand six hundred and forty-three dollars and eighty-five cents; that this defendant afterward, for money borrowed for the use of
679 said company and actually used in its business, became the surety or accommodation endorser for the said company to the amount of $102,417.60 *dollars* as follows:

To the Commercial Bank of Selma	$27,500 00
To the City National Bank of Selma	14,000 00
To the Alabama Nat'l Bank of Birmingham	8,000 00
To the Hanover Nat'l Bank of New York	27,500 00
To the Penn. Steel Company of Harrisburg, Pa.	2,567 70
To the Sloss Furnace Company	4,829 11
To the Sloss Iron & Steel Company	3,020 79
To James T. Fitzgerald, of Marion, Alabama	15,000 00

That on the paper to the said Hanover National Bank and Penn. Steel Company the said Preston B. Plumb is joint accommodation endorser with this defendant for said Brierfield Coal and Iron Company. All of said debts are past due and unpaid and are in fact the just debts of said Brierfield Coal and Iron Company.

That as a further security for the payment of said debt to the Commercial Bank of Selma this defendant deposited with said bank thirty-three of the first-mortgage bonds of the said Brierfield Coal and Iron Company issued under said mortgage to Preston B. Plumb, trustee, and each for one thousand dollars. The following six bonds so deposited are the property of the Brierfield Coal and Iron Company, namely: 443, 444, 445, 446, 447, and 448. The following twenty-seven bonds so deposited by this defendant are each the property of this defendant and are numbered as follows: 195, 196, 197, 198, 199, 200, 201, 202, 203, 235, 236, 237, 238, 239, 240, 371, 372, 373, 434, 435, 436, 453, 454, 455, 456, 457, and 458; that as a further security for the payment of said debt above mentioned to the City National Bank of Selma this defendant,
680 in addition to becoming an accommodation endorser to said bank for said company, deposited with said bank as collateral security for the said debt twenty-eight first-mortgage bonds of the Brierfield Coal and Iron Company belonging to this defendant and issued under said mortgage to Preston B. Plumb, trustee, and each for one thousand dollars and numbered as follows: 208, 209, 210, 211, 212, 213, 214, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, and 433.

That as a further security for the payment of said debt above mentioned to the Alabama National Bank of Birmingham this defendant, in addition to becoming an accommodation endorser to said bank for said company deposited with said bank as collateral security nine first-mortgage bonds of the Brierfield Coal and Iron Company belonging to this defendant and issued under said mortgage to said Preston B. Plumb, trustee, and each for one thousand dollars and numbered as follows: 241, 242, 243, 244, 381, 382, 383, 384, and 385.

That as a further security for the payment of said debt above mentioned to James T. Fitzgerald this defendant in addition to becoming an accommodation endorser to said Fitzgerald for said company deposited with said Fitzgerald as collateral security seven first-mortgage bonds of the said Brierfield Coal and Iron Company belonging to this defendant and secured by said mortgage to Preston

B. Plumb, trustee, and each for the sum of one thousand
681 dollars, and numbered as follows: 78, 359, 361, 386, 387, 388, and 389. That in addition to the said bonds belonging to this defendant he also deposited as president of the Brierfield Coal and Iron Company thirteen other bonds as collateral security to secure said debt to the said Fitzgerald; said bonds were issued under said Mortgage to said Preston B. Blumb, trustee, and were each for one thousand dollars. The said thirteen bonds so deposited were issued to said defendant, C. C. Huckabee, as hereinafter stated, and by said Huckabee were sold to said Fitzgerald, and by said Fitzgerald sold to the Brierfield Coal and Iron Company; said bonds were numbered 204, 205, 206, 207, 450, 451, 452, 437, 438, 439, 440, 441, and 442. So this defendant says that there is now on deposit as above stated seventy-one bonds belonging to this defendant, each for the sum of one thousand dollars, and each issued under the mortgage to said Preston B. Plumb, trustee, by the said Brierfield Coal and Iron Company as collateral security for the said debts of the Brierfield Coal and Iron Company, and in addition thereto this defendant is the surety or accommodation endorser for the other debts of the Brierfield Coal and Iron Company above described, and amounting to thirty-seven thousand nine hundred and seventeen and $\frac{60}{100}$ dollars in the aggregate, and for the payment of which the said creditors have no collateral security, or other than as above mentioned. That this defendant bought said seventy-one first-mortgage bonds of said Brierfield
682 Coal and Iron company as follows: This defendant bought and paid for forty-five of said bonds with his own money and paid the company therefor in cash ninety per cent. of their par value, and he bought and paid for twenty-six of said bonds with the money of his wife at ninety per cent. of their par value, and became the owner of said bonds by paying the Brierfield Coal and Iron Company in said way at ninety per cent. of their par value; that after said company was organized John G. Murray bought from said company six shares of its capital stock of one hundred dollars each, for which he paid said company the sum of six hundred dollars; that of the twelve hundred shares of the capital stock subscribed for by this defendant, and paid for as above stated, this defendant did transfer, as a gift, one share to his son, Edward T. Peter, and one share, as a gift, to Charles L. Bates, and he did transfer five hundred shares to Laura E. Williams as collateral security for the sum of eight thousand dollars, which this defendant borrowed from said Laura E. Williams. The said Laura E. Williams is a widow and resides in Cincinnati, Ohio, and this defendant did transfer six hundred and ninety-seven shares to Edward T. Peter, as truste- for Esther A. Peter, his wife, as collateral security for money borrowed from her by this defendant, amounting to more than the face value of said shares.

That said Esther A. Peter did, by this defendant, *did* subscribe for fifty thousand dollars of the capital stock of said company, and she did pay to said company, on account of said stock so subscribed by

her, the sum of fifty thousand dollars in cash; that said Rob-
683 ert L. McCalley did subscribe for five thousand dollars of the capital stock of said company, for which he paid said company the sum of five thousand dollars in cash. The payment for said stock by said McCalley was made in this way. The Brierfield Coal and Iron Company was indebted to Caswell C. Huckabee in the sum of twenty thousand dollars, less certain legal expenses, and the said Huckabee transferred to the said McCalley, who is his son-in-law, five thousand dollars of said debt, which was applied under the contract between the said Huckabee and the said company to the payment of said stock so subscribed by said McCalley; that the said Robert L. McCalley never obtained or paid *or paid* for any of the first-mortgage bonds of said company; that said Caswell C. Huckabee did subscribe to the capital stock of said company to the amount of fifteen thousand dollars, and he paid in part for said capital stock in this way. The said company was indebted to said Huckabee in the sum of twenty thousand dollars, less certain legal expenses, for lands purchased from said Huckabee. Five thousand dollars of this indebtedness was applied to the payment of the stock subscribed by McCalley, as above stated, and the remainder of said indebtedness, less expenses incurred by said company under contract with said Huckabee, was applied to the payment of thirteen bonds purchased by said Huckabee from said company, and the past due interest on said bonds, to wit, the sum of $2,166.00 was applied by said company as a payment on said subscription to the capital stock of said company made by said C. C. Huckabee; that for the seventy-five thousand dollars subscribed by said G. I. Seney, Calvin S. Brice, and Samuel Thomas, by the name of G. I. Seney
684 and associates, eighty three thousand dollars of the capital stock was in fact issued by the direction of Samuel Thomas to A. O. Beebe, who was then the private secretary of said Samuel Thomas. The said A. O. Beebe afterwards transferred three thousand dollars or thirty shares of said stock to Calvin S. Brice, and the other eight hundred shares of said stock still stands on the books of said company in the name of A. O. Beebe, but in fact belongs equally to Samuel Thomas and G. I. Seney. The said Seney, Brice, Thomas, and Beebe reside in the city and State of New York; that said Samuel Thomas paid on account of his forty thousand dollars of the capital stock the sum of twenty-three thousand seven hundred and forty-five dollars, being part of the same stock now standing in the name of said Beebe, but in fact belonging to said Samuel Thomas; that the said Calvin S. Brice paid on account of his three thousand of capital stock the sum of eight hundred and ten dollars; that the said G. I. Seney paid on account of his forty thousand of the capital stock the sum of twenty-two thousand eight hundred dollars, being part of the same stock now standing in the name of said Beebe, but in fact belonging to said Seney; that the said C. S. Plumb paid on her stock the sum of forty-three thousand eighty-nine and $\frac{78}{100}$ dollars, and on the 30th day of June, 1887, the said Preston B. Plumb gave to this defendant as president of said company four hundred and ninety-five

coupons of thirty dollars each, cut from first-mortgage bonds of said company, issued to C. S. Plumb, as hereinafter stated, being the coupons on said bonds, which matured April 1st and October 1st, 1885, April 1st and October 1st, 1886, and April 1st, 1887,
685 with instructions to credit said coupons on the stock account of said C. S. Plumb. This defendant soon after he received said coupons delivered them to John G. Murray, then the treasurer of said company, with direction to credit them on stock account of C. S. Plumb, but owing to the press of business the coupons were not so credited when the property of the company went into the hands of the trustee on August 2d, 1887, at which date Preston B. Plumb, as trustee, took possession of the property of said company, including its offices and books and *and* appointed John G. Murray his general agent for the management of property of said company; that afterward on August 6th, 1887, said Preston B. Plumb directed said Murray to send him these coupons on his, Murray's, application for orders about them; that said Murray sent these coupons to Preston B. Plumb at Emporia, Kansas; that if said coupons have been cancelled the said C. S. Plumb would be entitled to a further credit of fourteen thousand eight hundred and fifty dollars on account of her stock subscription.

That no payment has been made on the stock subscribed by Plumb and Hood, except as above stated by C. S. Plumb.

That Justin S. Morrill, on account of his subscription to the capital stock of said company, paid to said company the sum of six thousand two hundred and twenty dollars; that on July 9th, 1884, said company called on its stockholders for a payment of twenty per cent., and on August 20th, 1885, said company called on its stockholders for an additional payment of seven per cent., and on January 1st, 1886, said company called on its stockholders for an additional payment of thirty per cent. of their several subscriptions.

686 SECTION 2. That said Esther A. Peter bought and paid for with her own means two hundred and twenty-four of the first-mortgage bonds of said company at ninety per cent. of their par value in cash; that of said bonds five bond-, numbered 1, 2, 245, 246, and 247, the said Esther A. Peter caused to be issued to this defendant as trustee for her son, Edward T. Peter, and so registered under the provisions of said mortgage and they so continue registered; and she caused to be issued five other mortgage bonds of said 224, viz. 3, 4, 248, 249, and 250, in the name of this defendant as trustee for her daughter, Florence I. Peter, and so registered on the books of said company under the provisions of said mortgage, and they so continue registered.

And said Esther A. Peter of said 224 bonds purchased by her caused to be issued five other bonds, to wit, numbered 5, 6, 189, 190, and 191, in the name of this defendant, to be registered as trustee for her son, George F. Peter, and so registered on the books of said company under the provisions of said mortgage and still so registered; and the said Esther A. Peter of the 224 bonds so purchased from said company, also caused five other bonds, numbered 7, 8, 192, 193, and 194, to be issued in the name of this defendant as

trustee for her daughter, Blanche E. Peter, and so registered on the books of said company under the provisions of said mortgage, and they are still so registered; and the said Esther A. Peter of the 224 bonds so purchased caused the bonds numbered from 9 to 40, both inclusive, and from 74 to 77, both inclusive, and from 123 to 127, both inclusive, and from 180 to 188, both inclusive, to be registered in her own name on the books of said company under the provisions of said mortgage, and bonds from 306 to 308, both
687 inclusive, and from 313 to 319, both inclusive, and from 434 to 436, both inclusive, and from 453 to 458, both inclusive, and from 459 to 488, both inclusive, and from 495 to 500, both inclusive, she had issued to bearer, and also bonds from 390 to 429, both inclusive, were so issued, and that bonds numbered from 334 to 358, both inclusive, and bond numbered 360 and bonds numbered 362 to 370, both inclusive, and from 374 to 380, both inclusive, and bonds numbered from 215 to 228, both inclusive, were issued *were issued* in the name of this defendant without the knowledge or consent of said Esther A. Peter. And that afterwards, in January, 1887, the said Esther A. Peter purchased from the said Brierfield Coal and Iron Company bonds numbered from 254 to 261, both inclusive, and bond numbered 265, and *and* paid therefor in cash at ninety per cent. of their par value; that these bonds had been registered in the name of A. O. Beebe and had been taken from Samuel Thomas in part payment of his stock assessment, and that said bonds were payable to bearer by retransfer on the books of the company under the provisions of said mortgage when she so purchased them and are so now.

That afterward on January 26, 1887, said Esther A. Peter had transferred on the books of said company in accordance with the provisions of the mortgage the following bonds to bearer, namely, bonds numbered 40, 74 to 77, both inclusive, 123 to 127, both inclusive, 374 to 380, both inclusive, 349 to 358, both inclusive, and on December 15th, 1886, bonds numbered from 334 to 348, both inclusive, and on December 31st, 1886, bonds numbered from 362 to 364, both inclusive, and bond numbered 360, and on Sep-
688 tember 20, 1884, bonds numbered from 390 to 422, both inclusive, and thes- bonds so stand to-day on the books of the company.

That on December 31st, 1884, the following bonds of the 215 purchased by said Esther A. Peter 320, 321, 322, and 323, but which had been issued in the name of T. J. Peter, were transferred on the books of the company to John G. Murray, and were on April 20th, 1886, transferred by said John G. Murray to bearer on the books of said company in accordance with the provisions of said mortgage, and so stand now, but are the property of said Esther A. Peter.

That on January 22nd, 1887, the following bonds of the 224 purchased by said Esther A. Peter, numbered from 215 to 228, both inclusive, were transferred on the books of the company in the name of said Esther A. Peter in accordance with the provisions of said mortgage.

That six bonds of said company numbered from 229 to 234, both

inclusive, belonging to said Esther A. Peter, were sold to M. S. Pomeroy, but were replaced by six of the bonds obtained from Samuel Thomas as aforementioned, and bonds numbered 262, 263, and 264 obtained from Samuel Thomas were also sold to M. S. Pomeroy; that said M. S. Pomeroy resides in Washington, D. C.; that said Esther A. Peter, of the 224 bonds so purchased by her from said company, now holds, as her own property, 198 of said bonds, and she has in her possession the twenty bonds issued as aforesaid in the name of this defendant as trustee for her said four children, respectively, as above stated. The said Esther A. Peter resides at Oconomowoe, Waukesha county, State of Wisconsin.

That said C. S. Plumb bought from said company one hundred of the first-mortgage bonds of said company issued under
689 said mortgage, for which she paid the company in cash ninety per cent. of their par value, amounting to ninety thousand dollars.

That — said one hundred bonds so purchased by C. S. Plumb the following bonds were issued to bearer, namely, from 79 to 111, both inclusive, and from 140 to 199, both inclusive, and bond numbered 253, originally issued to A. O. Beebe for Samuel Thomas, but transferred to bearer on the books of the company; and of the one hundred bonds so issued to C. S. Plumb the following are registered, under the provisions of said mortgage, on the books of the company in her name: bonds numbered from 284 to 305, both inclusive; numbered 310, 311, & 312 and 309, and numbered from 489 to 494, both inclusive; that the said Samuel Thomas bought and paid said company for forty of its first-mortgage bonds in cash at ninety per cent. of their par value. The bonds so purchased by said Thomas were numbered as follows, namely, from 128 to 138, both inclusive, and from 251 to 279, both inclusive, and of these bonds so purchased by Thomas all were registered in the name of said A. O. Beebe; said Thomas delivered to said Brierfield Coal and Iron Company, in payment of stock assessment, thirteen bonds, numbered from 253 to 265, both inclusive, which were sold again by said company, as herein before stated, but there still remains twenty-seven bonds belonging to said Samuel Thomas, registered in the name of said Beebe, under the provisions of said mortgage; that said Calvin S. Brice purchased and paid for three of the bonds of said company, numbered 280, 281, and 282; these thre- bonds are registered on the books of said company in the name of said A. O. Beebe, but in fact belong to said C. S. Brice.

690 That said G. I. Seney bought and paid for, at the rate of ninety per cent. of their par value, in cash, *for* forty of the first-mortgage bonds of said company, numbered as follows: 41 to 73, both inclusive, and 139 to 145, both inclusive. These forty bonds were originally registered in the name of A. O. Beebe on the books of said company, and were by said Beebe transferred to G. I. Seney, and now stand registered on the books of said company, under the provisions of said mortgage, in the name of G. I. Seney; that said Justin S. Morrill bought and paid for eleven of the first-mortgage bonds of said company, for which he paid in cash at ninety per

cent. of their par value; that of said bonds so purchased by said Morrill the bonds numbered from 112 to 117, both inclusive, were issued to bearer, but that the bonds numbered from 118 to 122, both inclusive, are registered in his name on the books of said company under the provisions of said mortgage.

That James T. Fitzgerald now holds twenty of the first-mortgage bonds of said company as collateral security for the debt hereinbefore stated, of which seven are bonds issued to this defendant, and the other thirteen are the bonds issued to C. C. Huckabee; that John G. Murray bought and paid for one bond of said company, numbered 283, for which he paid in cash ninety per cent. of its par value, and holds as collateral for his endorsement of two notes of twenty-five hundred dollars each, given by the Brierfield Coal and Iron Company to the Commercial Bank of Selma, and which said notes have not been paid by the Brierfield Coal and Iron Company, and which money obtained by discounting said notes was used in the legitimate business of the Brierfield Coal and
691 Iron Company, seven first-mortgage bonds of said company belonging to said company and numbered 443, 444, 445, 446, 447, 448, and 449.

That Robert L. McCalley, as this defendant is informed and believes and states, never purchased and does not now hold any of the bonds of said company.

This defendant does not now hold any of the bonds of said company, but twenty of said bonds are registered on the books of said company in the name of this defendant, as trustee for the four children respectively of his said wife, Esther A. Peter, as hereinbefore stated, and the seventy-one bonds belonging to this defendant so hypothecated for the debts of the Brierfield Coal and Iron Company and held as hereinbefore stated.

The debt to W. D. & K Carter, Jr., which the company owes, is correctly stated in said bill, but the said company has been summoned as garnishee and debtor to said Carter in three different cases, and in addition to the debt of said Carter, as stated in the bill, the said company is indebted to the said Carters in the sum of thirty-nine hundred dollars, which it holds under a contract with the said Carters to secure itself against said granishments; that the statement in said bill as to the amount due from said company to laborers, miners, mechanics, and other employees is approximately correct.

SECTION 3. That the debt mentioned in the first part — section three of the bill, for five thousand dollars, in two notes of twenty-five hundred dollars each, on which said John G. Murray and this defendant became accom-odation endorsers for the said company, is a part of the debt hereinbefore mentioned, which the said
692 company owes to the Commercial Bank of Selma, and for the payment of which this defendant is surety or accom-odation endorser for said company, and for the payment of which this defendant delivered to said bank twenty-seven of his first-mortgage bonds as part collateral security, as hereinbefore fully stated.

SECTION 4. This defendant states that a large amount of money

has been invested in this property now owned by the Brierfield Coal and Iron Company, namely, about nine hundred thousand dollars; and this defendant is informed and believes and so states that said property now owned by the said Brierfield Coal and Iron Company and covered by the mortgages mentioned in said bill is now intrinsically of the value of more than one million dollars. The said Preston B. Plumb, as trustee, did, about August 1st, 1887, under said mortgage, demand possession of all the property covered by said mortgage, as stated in said bill, and the said property was surrendered to said Preston B. Plumb, as trustee, on August 2nd, 1887.

That in addition to the debt due W. D. & K. Carter, Jr., there are other debts owing by said company which are a prior and superior lien on certain tracts of the property of said company to the said mortgage to the complainant, namely, the Brierfield Coal and Iron Company owes to the State of Alabama debt amounting, with interest to November 1st, 1887, to the sum of about $3,825.00, which is a lien for purchase-money on section 16, township 22 south, range 4 west.

And the said company owes a note originally given to B. B.
693 Lewis and now held by the First National Bank of Birmingham, Alabama, amounting to about $700.00, which was given for certain lands purchased by said company from B. B. Lewis and is a lien thereon.

And the company owes a debt to Frank Nabors for certain lands purchased from said Nabors, and the debt is a lien on the lands so purchased, and said notes mature as follows, namely:

January 4th, 1888, note and interest	$821 00
July 4th, 1888, note and interest	841 00
And Jan'y 4th, 1889, note and interest	861 00

SECTION 6. That said mortgage or deed of trust, of *of* which Exhibit "A" to the bill was a copy, was duly executed by the said Brierfield Coal and Iron Company by authority of its stockholders, duly given by a resolution of said stockholders, and als- by authority of the board of directors of said company, given by a resolution duly adopted in a meeting of said directors, and the mortgage — on the minutes of said company by order of the board of directors thereof, and was duly recorded, as stated thereon, by order of the board of directors of said company.

That the said Brierfield Coal and Iron Company sold the bonds secured by said mortgage, as hereinbefore stated, and received the money therefor and used and expended the money so received in its business knowing that said money was the proceeds of the sale of said bonds, and that the rate for which said bonds were sold was a fair and reasonable price for said bonds and more than could have been received from any one else than the stockholders of said company.

694 That afterwards, on July 29th, 1887, the said company, by order of the board of directors of said company and under the provisions of the first mortgage, and according to the covenants

therein, for other and further assurances did execute, by Thomas J. Peter, its president, and under the seal of said company, attested by its secretary and duly witnessed, another mortgage or deed of trust to said Preston B. Plumb, as trustee, of all its property to secure the payment of the bonds issued under the first mortgage, as stated in this bill.

And this defendant, having fully answered, prays to be hence discharged with his reasonable costs.

THOMAS J. PETER.

THE STATE OF ALABAMA, }
Montgomery County. }

Before me, a notary public in and for said county and State, personally came Thomas J. Peter, who, being duly sworn, deposes and says that the matters and things stated in the foregoing answer as of his own knowledge are true, and that the matters and things stated in the foregoing answer as on information and belief he believes the same to be true.

THOMAS J. PETER.

Sworn to and subscribed before me this day, as witness my hand and official seal this the 8th day of November, A. D. 1887.

[SEAL.] GEO. W. NOBLE,
Notary Public.

MARKS & MASSE,
Sol'rs for Thomas J. Peter.

Filed Nov. 8th, 1887.

J. W. DIMMICK, *Clerk.*

695 *Order Appointing W. L. Chambers Trustee.*

In the Circuit Court of the United States for the Middle District of Alabama.

PRESTON B. PLUMB, Trustee, } In Equity. Nov.
vs. } Term, 1887.
THE BRIERFIELD COAL AND IRON COMPANY *et als.* } # 103.

In this cause the trustee, Preston B. Plumb, having tendered his resignation of the trust now being administered by him in this cause under the direction and control of this court, on consideration thereof it is ordered by the court that said resignation be, and the same is hereby, accepted, and that the said Preston B. Plumb forthwith file in this cause a full and complete account and report, showing all monies received and disbursed by him on account of said trust and all his acts and doings as said trustee, and that he further abide the order and decrees of this court until duly discharged by law; and it appearing to the court that the nature of the trust and the character of the property are that no delay should intervene between the resignation of said Plumb and — his successor in said trust, and

William L. Chambers, of Montgomery, Alabama, having been suggested to the court for appointment as trustee in the place and stead of said Preston B. Plumb, and it being made to appear to the satisfaction of the court that the said William L. Chambers is a suitable and proper person to discharge the — of said trust, it is therefore ordered by the court that the said William L. Chambers be,
696 and he is hereby, appointed trustee of all the estate, property, rights, and credits of the said Brierfield Coal and Iron Company that are embraced in and conveyed by the two deeds executed by said company to said Plumb and dated respectively the 1st day of September, 1882, and the 29th day of July, 1887, together with all property arising out of or pertaining to said trust estate, and that the said William L. Chambers be, and is hereby, invested with all powers, authority, and duties heretofore conferred on said Preston B. Plumb, as such trustee, by the orders and decrees of this court in so far as the same have not already been performed by said Plumb.

It is further ordered that the said William L. Chambers, before entering upon the discharge of the duties of this trust, execute and file in this court a bond in the sum of ten thousand dollars, with good and sufficient security, to be approved by the clerk of this court; said bond to be payable to such clerk, with condition well and truly to account for all monies that may come into his hands as such trustee, and for the faithful performance of all duties that are or may be required of him; which said bond shall remain on file and of record in this court for the benefit of all persons interested in said trust estate.

It is further ordered that the said Preston B. Plumb, his agents and attorneys, upon the filing of said bond by said Chambers and the approval thereof by the clerk of this court as aforesaid, turn over and deliver to the said William L Chambers all monies, books, papers, property, estate, and credits embraced in said trust deed and appertaining ther-to, or which have in any manner come into the possession of said Plumb by virtue of the said trust, and this suit henceforth *proved* in the name of such William L. Chambers, as trustee as aforesaid.

JOHN BRUCE, *Judge.*

Nov. 21, '87.

Filed Nov. 21st, 1887.

J. W. DIMMICK, *Clerk.*

697 *Answer of Ester A. Peter.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

PRESTON B. PLUMB, as Trustee,
vs.
THE BRIERFIELD COAL AND IRON COMPANY, ESTHER A. PETER, and Others.

The separate answer of Esther A. Peter, one of the defendants, to the bill of complaint lately exhibited in said court by Preston B. Plumb, as trustee, against The Brierfield Coal and Iron Company, a corporation, this defendant and others.

SECTION 1. The said defendant, Esther A. Peter, for answer to said bill of complaint, says that she is the wife of Thomas J. Peter, one of the defendants in said cause; that she is not a citizen of the State of *of* Alabama; that she resides in and is a citizen of the State of Wisconsin; that she was not a citizen of the State of Alabama when said bill was filed; that she is over the age of twenty-one years.

SECTION 2. This defendant is informed and believes, and therefore states, that the said Brierfield Coal and Iron Company was duly organized as a corporation on the 4th day of May, 1882, under
698 the general laws of the State of Alabama; that afterwards, to wit, on the 12th day of December, 1884, by an act of the General Assembly of the State of Alabama entitled "An act to amend and ratify the charter of the Brierfield Coal and Iron Company, of Bibb county, Alabama," the said corporation by said name was "declared to b- a body corporate under the laws of this State by its present name and style," and by said act additional powers were granted to said corporation, all of which will fully and at large appear by reference to the said act, approved December 12th, 1884, and printed in the acts of Alabama, 1884–'85, on pages 255, 256, and 257, to which this defendant refers as a part of her answer.

SECTION 3. That this defendant is informed and believes, and therefore states, that the capital stock of said company was divided into shares of one hundred dollars each; that the original subscriptions to the capital stock of said company were made by the persons and for the amounts following:

Thomas J. Peter and associates	$120,000 00
Esther A. Peter	50,000 00
R. L. McCalley	5,000 00
C. C. Huckabee	15,000 00
George I. Seney, Samuel Thomas, and Calvin S. Bryse, by the name of George I. Senney and associates	75,000 00
Carrie S. Plumb	50,000 00
Plumb & Hood	50,000 00
Justin S. Morrill	10,000 00

699 That the name of this defendant was signed to said subscription of stock by the said Thomas J. Peter, her husband, by her consent; that the name of G. I. Seney and associates was signed to said subscription of stock by Samuel Thomas; that the name of Carrie S. Plumb and Plumb and Hood were signed to said subscription of stock by Preston B. Plumb; that said Carrie S. Plumb is the wife of said Preston B. Plumb; that said Plumb & Hook is a partnership engaged in merchandise, mining and buying and selling stocks, and is composed of said Preston B. Plumb and Calvin Hood, and their principal place of business is at Emporia, in the State of Kansas, where both of said parties reside.

SECTION 4. This defendant is informed and believes and therefore states that the said subscription to the capital stock of said company made in the name of Plumb and Hood was not, in fact, made for said Carrie S. Plumb, but was made for the said Plumb & Hood; that after said subscription had been made and said corporation organized, the said stock, subscribed for in the name of Plumb and Hood by some arrangement unknown to this defendant, was issued to and in the name of said Carrie S. Plumb.

SECTION 5. This defendant, further answering, says that the
700 said Thomas J. Peter, after the organization of said corporation, had in his possession and used in the business connected with said Brierfield Coal and Iron Company for his own purposes, or otherwise for his own use, a large sum of money belonging to this defendant as a part of her separate estate, to wit, the sum of more than $75,000.00; that to secure the payment of the money of this defendant, secured by her said husband for his own purpose, the said Thomas J. Peter, as this defendant is informed and believes and states, did transfer to said Edward S. Peter, as trustee for this defendant, six hundred and ninety-seven (697) shares of the capital stock of said company as collateral security for the payment to this defendant of the money of this defendant so used as aforesaid by the said Thomas J. Peter; and this defendant is informed and believes and states that the said Thomas J. Peter did transfer to Laura E. Williams five hundred shares of the capital stock of said company as collateral security for the payment of the sum of $8,000.00, money loaned by said Laura E. Williams to said Thomas J. Peter; that said Thomas J. Peter did transfer one share of the capital stock of said company to his son, the said Edward T. Peter, as a gift, and that said Thomas J. Peter did transfer one share of the capital stock of said company to said Charles L. Bates as a gift.

701 SECTION 6. This defendant, further answering, says that she did subscribe for the capital stock *stock* of said company to the amount of fifty thousand dollars, and that she paid to said company for and on account of the stock so subscribed for by her the sum of fifty thousand dollars in cash.

SECTION 7. That as this defendant is informed, and believes and states, that the said Thomas J. Peter, for and on account of the stock of said company, so subscribed for by him, paid to said company the sum of $83,640.85, and that said Thomas J. Peter, who was president of said company, borrowed for said company and on the

notes of said company, on which he was surety or accommodation endorser, large sums of money, loaned to said company by the City National Bank of Selma, by James T. Fitzgerald of Marion, Alabama, by the Commercial Bank of Selma, by the Alabama National Bank of Birmingham, by the Hanover National Bank of New York, and by the Pennsylvania Steel Company, respectively.

That the money so borrowed, and amounting in the aggregate to more than ninety thousand dollars, is now past due and unpaid; that to secure the payment of the sum of about $14,000.00, so borrowed as aforesaid from the City National Bank of Selma, the said

Thomas J. Peter deposited with said City National Bank, as
702 collateral security, twenty-eight first mortgage bonds of the Brierfield Coal and Iron Company of one thousand dollars each belonging to said Peter, and said bank now holds said bonds as collateral security for the payment of said debt.

That of the money so borrowed from the Commercial Bank, and for which said Thomas J. Peter is security or accommodation endorser, there is still unpaid $27,500.00; that for the payment of said sum the said Thomas J. Peter deposited with said Commercial Bank, as collateral security for said debt, 27 of the first mortgage bonds of the said Brierfield Coal and Iron Company for one thousand dollars each belonging to the said Thomas J. Peter, and the said bank still holds said bonds as collateral security for the payment of said debt.

That to secure the payment of $8,000.00, money so borrowed for said company from the Alabama National Bank at Birmingham, which is still unpaid, the said Thomas J. Peter deposited with said bank nine of the first mortgage bonds of said company belonging to him for one thousand dollars each, and said Alabama National Banks now hold- said nine bonds as collateral security for the payment of said debt.

That to secure the payment of $15,000.00, so borrowed from said James T. Fitzgerald, the said Peter deposited with said Fitzgerald seven first mortgage bonds of said company belonging to him for one thousand dollars each, and the said Fitzgerald now holds said seven bonds as collateral security for the payment of said debt, which is past due and unpaid.

703 SECTION 8. That, as this defendant is informed and believes and states, said R. L. McCalley subscribed for and paid five thousand dollars for and on account of his capital stock in said company.

That said C. C. Huckabee paid on *on* his stock subscription to said company the sum of $2,166.00.

That by some arrangement, which this defendant does not know or understand, for the subscription of $75,000.00 for the capital stock of said company, made by George I. Seney, Samuel Thomas, and Calvin S. Brice, by the name of George I. Seney and associates, there was issued to A. O. Beebe, who was then private secretary of said Samuel Thomas, a certificate of stock to the amount of $83,000.00, but said stock was in fact for George I. Seney and his said associates; that afterwards said A. O. Beebe transfer-ed $3,000 of said $83,000.00 of stock to said Calvin S. Bryce, and the said Bryce paid to said

company, for and on account of said $3,000.00 of stock, the sum of $810.00; that of said $83,000.00 of stock said A. O. Beebe holds $40,000.00 of said stock for said George I. Seney, and the said George I. Seney has paid to said company for and on account of said $40,000 of stock the sum of $22,800.00; that of the said $83,000.00 so issued to A. O. Beebe there still stands on the books of the company in the name of said A. O. Beebe, but in fact for said Samuel Thomas, $40,000.00 of stock, on which the said Samuel Thomas has paid to the said company the sum of $23,745.00.

704 That for and on account of the $10,000.00 subscribed for by the said Justin S. Morrill he has paid to said company the sum of $6,270.

That for the subscription to the capital stock subscribed for in the name of Carrie S. Plumb and for the subscription to the capital stock of said company subscribed for by Plumb & Hood, by some arrangement which this defendant does not know and does not understand, stock to the amount of $10,000.00 was issued to and in the name of Carrie S. Plumb, and the said Carrie S. Plumb, for and on account of the stock so issued to her, has paid to said company $43,087$\frac{78}{100}$.

That, as this defendant is advised and believes and states, the said Preston B. Plumb, on the 30th day of June, 1887, delivered to Thomas J. Peter, then the president of said company, four hundred and ninety-five coupons of $30.00 each taken from first-mortgage bonds of said Brierfield Coal and Iron Company, which had been bought by and had been issued to said Carrie S. Plumb, with instructions to credit said 495 coupons on the stock account of said Carrie S. Plumb. The said coupons were by said Peter delivered to John G. Murray, then the treasurer of said company, and placed by him in the safe of said company, but were not, in fact, credited on the stock account of said Carrie S. Plumb because of the then press of business; that afterwards, and after said Preston B. Plumb as trustee had taken possession of the property of said company, said Preston B. Plumb, on the 6th day of August, 1887, directed said John

705 G. Murray, who was then the general agent of the said Plumb as trustee, to send said 495 coupons to said Plumb, at Emporia, in the State of Kansas, and said Murray did send said coupons to said Plumb as directed.

That said Plumb & Hood never made any payment to said company for or on account of their subscription to its capital stock.

That after said company was organized the said John G. Murray bought from said company six shares of its capital stock and paid said company therefor the full amount, to wit, $600.00 in cash.

That the board of directors of said Brierfield Coal and Iron Company at different times made three calls for payments on the stock subscriptions. The first call was for 20 per cent. of the stock subscribed; that the second call was for the payment of seven per cent. of the stock subscribed, and the third call was for the payment of thirty per cent. of the stock subscribed.

That, as this defendant is informed and believes and states, the foregoing is a full and accurate description and statement of all the

stock of said Brierfield Coal and Iron Company subscribed for and of all the payments made thereon.

SECTION 9. And the said defendant, further answering, says that on or about the 1st day of September, 1882, as this defendant is informed and believes and states, the said Brierfield Coal & Iron Company did duly execute the mortgage or deed of trust to the said Preston B. Plumb as trustee, a copy of which is attached to
706 the said bill of complaint and marked Exhibit "A" and bears date September 1st, 1882; that said mortgage or deed of trust was executed in accordance with and under the authority of a resolution duly adopted at a stockholders' meeting of the stockholders of said company duly called for that purpose, and of which meeting notice was given by publication for more than thirty days in the "Bibb Blade," a newspaper published in the county of Bibb, in which county said company had its principal office and place of business; that after said stockholders' meeting and before the execution of said deed of trust a copy of said mortgage was presented to a meeting of the board of directors of said company and copied into the minutes of the proceedings of said board of directors, and a resolution was duly adopted at said meeting directing the president and secretary of said company to execute said mortgage or deed of trust for said company, and the said president did duly execute said mortgage or deed of trust in the name of and for said company, and the said secretary did duly attach the seal of the company thereto, and the same was also executed by said P. B. Plumb, trustee, by signing his name thereto; that the execution of said mortgage or deed of trust was duly acknowledged before Jesse W. Mahan, then — there a justice of peace in and for Bibb county, who then and there duly certified said acknowledgment on said mortgage or deed of trust; that afterwards said mortgage or
707 deed was duly recorded in the office of the judge of probate of Bibb county, on the 8th day of November, 1882, and that afterwards the same was duly recorded in the counties of Shelby and Chilton.

That afterwards, on the 29th day of July, 1887, in accordance with the covenant in said mortgage or deed of trust contained and under a resolution adopted by the board of directors of said company authorizing and directing the execution by the officers of said company of another mortgage or deed of trust, the said Brierfield Coal & Iron Company, by its president, duly executed the mortgage or deed of trust, which bears the date the 29th day of July, 1887, and attached to said bill of complaint and marked Exhibit "A;" that the seal of said company was thereto attached and attested by the secretary of said company; that the said last-named mortgage or deed of trust was executed in the presence of two witnesses, who signed their names thereto as subscribing witnesses, and the execution of said mortgage or deed of trust was duly acknowledged before, and said acknowledgment was duly certified on said mortgage by Fred. Plaff, then and there a justice of the peace in and for Bibb county; that said last-named mortgage or deed of trust was duly

recorded in the counties of Bibb, Shelby, and Chilton, in the respective offices of the judges of probate of said counties.

That said mortgages were executed by said company for the purpose of securing five hundred bonds of said company of one thousand dollars each, with coupons for semi-annual interest at
708 the rate of six per cent. per annum, as by reference to said Exhibit "A" attached to the bill will more fully and at large appear.

SECTION 10. This defendant, further answering said bill of complaint, says that she bought from said Brierfield Coal & Iron Company one hundred and ninety-eight (198) of its first-mortgage bonds, issued under and secured by *by* said mortgage or deed of trust to said Plumb, trustee, for which she paid said company in cash at the rate of $900.00 per bond of one thousand dollars or 90 per cent. of the bonds.

That she is now the holder and owner of said bonds in her own right as a part of her separate estate. The said 198 bonds are numbered, respectively, as follows: 9 to 40, both inclusive; 74 to 77, both inclusive; 123 to 127, both inclusive; 180 to 188, both inclusive; 306 to 308, both inclusive; 313 to 319, both inclusive; 334 to 358, both inclusive; 374 to 380, both inclusive; 390 to 422, both inclusive; 459 to 488, both inclusive; 495 to 500, both inclusive; 215 to 228, both inclusive; 254 to 261, both inclusive; 362 to 370, both inclusive; 320 to 323, both inclusive; and 265 and 360. The 67 of said 198 bonds are each noted on said bonds as registered in the name of the defendant as owner.

That in addition to the said 198 bonds so purchased and paid for by this defendant as aforesaid this defendant purchased from said company and paid for at the rate of 90 cents on the dollar
709 20 other bonds issued under and secured by the said deed of trust to the said P. B. Plumb, trustee. Five of said bonds, numbered, respectively, 1, 2, 245, 246, and 247, were registered on the books of said company in the name of Thomas J. Peter, as trustee for this defendant's son, Edward T. Peter, and the said registration was noted on each of said bonds. This was done by this defendant as a gift to her son, Edward T. Peter.

That five other of said twenty bonds, numbered, respectively, as follows: 3, 4, 248, 249, 250, were registered on the books of said company in the name of Thomas J. Peter, as trustee for Florence J. Peter, who is a daughter of this defendant. This was done as a gift from this defendant to her said daughter.

That five other of said twenty bonds so purchased by this defendant, numbered, respectively, 5, 6, 189, 190, and 191, were registered on the books of said company in the name of Thomas J. Peter, as trustee for George F. Peter, and this was done as a gift from this defendant to said George F. Peter, who is her son.

That the other five of said twenty bonds so purchased by this defendant, numbered, respectively, 7, 8, 192, 193, and 194, were registered on the books of said company in the name of Thomas J. Peter, as trustee for Blanche E. Peter, daughter of this defendant. This was done as a gift from this defendant to her said daughter.

SECTION 11. And this defendant, further answering, says that she is informed and believes and states that under the provisions of the said deed of trust to the said Preston B. Plumb, bearing
710 date September 1, 1882, and under the provisions of the bonds issued under and secured by said mortgage, the said bonds, when not registered, are negotiable commercial securities, and that said bonds, when registered and made payable to bearer, are negotiable commercial securities, but that said bonds, when registered and made payable to a particular person or corporation, are not negotiable until they are again registered and made payable to bearer.

That the said 198 bonds so purchased as aforesaid by this defendant and the said 20 bonds when purchased as aforesaid by this defendant were negotiable commercial securities; but 67 of said 198 bonds and said 20 bonds were afterwards registered, as hereinbefore stated, after they were purchased by this defendant.

That in addition to the said 67 of said 198 bonds and the said 20 bonds there are a large number of other bonds issued under said mortgage, which are registered on the books of said company, and thereby made payable to certain named individuals.

That the following bonds, which were purchased and paid for by Samuel Thomas at the rate of 90 cents in the dollar, namely, bonds numbered, respectively, from 128 to 138, both inclusive; 266 to 279, both inclusive; 251 and 252, are registered on the books of said company and made payable to A. O. Beebe, but, in fact, belong to said Samuel Thomas.

That three of said first-mortgage bonds, numbered, respectively, 280, 281, and 282, stand registered on the books of said com-
711 pany as payable to Calvin P. Brice, and said registration is as noted on each of said bonds.

That first-mortgage bonds of said company, numbered respectively from 41 to 73, both inclusive; from 139 to 145, both inclusive (40 bonds), are registered on the books of said company and made payable to George I. Seney, and said registration is noted on each of said bonds.

That thirty-two (32) of the first-mortgage bonds of said company, numbered respectively from 284 to 305, both inclusive; from 310 to 312, both inclusive; from 489 to 494, both inclusive, and 309, are registered on the books of said company as payable to Carrie S. Plumb, and said registration is noted on each of said bonds.

That five (5) of said first-mortgage bonds of said company purchased and paid for by said *said* Justin I. Morrill are registered on the books of said company as payable to said Justin I. Morrill, and said registration is noted on each of said five bonds; that said Morrill purchased said five bonds from the said company at 90 cents on the dollar, and the said 5 bonds are numbered respectively from 118 to 122, both inclusive.

That this defendant has no knowledge, information, or belief as to said Robert L. McCalley owning any of said first-mortgage bonds, but she is informed and believes and states that none of said first-mortgage bonds were delivered by said company to said Robert L. McCalley.

SECTION 12. This defendant, further answering, states that she is the *bona fide* holder and owner of one thousand and
712 twenty-nine (1,029) past-due coupons taken from the first-mortgage bonds of the said Brierfield Coal and Iron Company, for thirty dollars ($30) each; that 285 of said coupons were due and *and* payable on the 1st day of April, 1886; that 281 of said coupons were payable on the 1st day of October, 1886; that 245 of said coupons were payable on the 1st day of April, 1887, and 218 of said coupons were payable on the 1st day of October, 1887; that all of said 1,027 coupons are past due and unpaid.

SECTION 13. That this defendant is informed and advised and believes and states that she has a first lien on all the property of the Brierfield Coal & Iron Company covered by said mortgages or either of them for the payment of the said 198 bonds purchased and paid for by her as aforesaid and now held by her, and also for the payment of the said 1,027 coupons, of which she is the owner as aforesaid, and that her said lien is prior and superior to the liens of all other persons whatsoever, excepting such persons who may in equity have an equal lien with this defendant as *bona fide* holders for value of the first-mortgage bonds of said company issued under the provisions of said mortgage or deed of trust to the said Preston B. Plumb, trustee, and excepting certain other persons who may have a lien on certain parts of the property of the said defendant corporation for unpaid purchase-money for such property sold by such persons to said defendant corporation.

And this defendant, on like information, advice, and belief, denies that said Preston B. Plumb, by becoming security or accommodation endorser for said company, acquired or has any lien upon the property of said company, and she also denies that
713 Thomas J. Peter and said John G. Murray and said Plumb or either of them, by becoming surety or accommodation endorser for money borrowed by said company or by any use of the money so borrowed, acquired any lien upon the property of said company or acquired any right to be subrogated to the lien of any person whatsoever by the payment of money so borrowed to any person having a lien on any part of said property of said company.

SECTION 14. This defendant is informed and believes and states that said W. D. and Keesley Carter have a lien on certain property of said defendant corporation covered by said mortgage to said Plumb for unpaid purchase-money of real estate sold by said W. D. & K. Carter, and that said lien is superior to said first mortgage, and that said lien when said bill was filed was for more than $11,474.60, but this defendant is unable from any knowledge she has to state the amount of said lien accurately.

SECTION 15. This defendant is informed and believes and states that the said defendant corporation when said bill was filed was indebted to laborers, miners, mechanics, and other employees in a large amount in the aggregate, but that the debts to laborers, miners, mechanics, and other employees have all been paid.

SECTION 16. This defendant, on information and belief, says that said Preston B. Plumb, as trustee under said mortgage, did, on

about the 1st day of August, 1887, demand and obtain pos-
714 session of the real and personal property of the Brierfield Coal and Iron Company, and that he now holds said property as such trustee; that said Plumb did appoint said John G. Murray his general agent to hold, control, and manage said property; that said Murray is familiar with said property and its management since it first went into the possession of said company, and that said Murray is reputed to be a trustworthy and skillful man. And this defendant, having fully answered said bill of complaint so far as she is advised it is material she should answer, prays to be hence discharged with her reasonable costs.

PETUS & PETUS,
Sol's for Def't.

THE STATE OF MISSOURI, }
City of St. Louis. }

Before me, Julius Robertson, a notary public in and for said city and State, personally came Esther A. Peter, the defendant named in the foregoing answer and to me known, who, being duly sworn, deposes and says that the matters and things stated in the foregoing answer as of her own knowledge are true, and that the matters and things stated in the foregoing answer as on information and belief she believes to be true.

ESTHER A. PETER.

Sworn to and subscribed before me by said Esther A. Peter, in the city aforesaid, on the 14th day of November, 1887.

Witness my hand and official seal on the day and year last aforesaid.

JULIUS ROBERTSON,
Notary Public, City of St. Louis, Mo.

715 Filed the 29th day of November, 1887.
J. W. DIMMICK, *Clerk.*

716 *Answer of E. T. Peter.*

In the Circuit Court of the United States for the Middle District of Alabama.

PRESTON B. PLUMB, as Trustee, &c., Complainant,	}	In Equity.
vs.	}	
THE BRIERFIELD COAL AND IRON COMPANY *et als.*, Resp'd'ts.	}	103.

Answer of Edward T. Peter to the bill of complaint filed in this court by Preston B. Plumb, as trustee, against him and other defendants, and the amendments thereto.

This respondent, saving and reserving all right of exception to said bill of complaint as amended, for answer thereto, or to so much and

such parts thereof as he is advised it is material for him to make answer unto, answering, says that he, on information and belief, admits each and all the averments and allegations contained in said bill as amended; and, having fully answered the said bill of complaint, this respondent prays to be hence dismissed with his cost.

EDWARD T. PETER.

Filed Dec. 3rd, 1889.

J. W. DIMMICK, *Clerk.*

COUNTY OF SHELBY, }
State of Alabama. }

Before me, French Nabor, a notary public in and for said county and State, came Edward T. Peter, whose name is subscribed to the above-written answer, and who is personally known to me to be the person whose name is so subscribed, and who, being sworn, states under oath that the above answer is true to his best knowledge and belief and information.

EDWARD T. PETER.

Sworn to and subscribed before me on this eighth day of September, A. D. 1887.

FRENCH NABORS,
N. P. & E. O. J. P.

717 *Answer of Laura E. Williams.*

In the Circuit Court of the United States for the Middle District of Alabama.

P. B. PLUMB, Trustee,
vs.
BRIERFIELD COAL AND IRON COMPANY *et al.* } # 103.

Now comes the defendant, Laura E. Williams, and for answer to the bill of complaint filed in this cause said—

That this respondent is informed and believes that the allegations in said bill contained are true, and on such information and belief admits the same to be true as therein stated; and, having fully answered, prays to be *prays to be* hence dismissed with her reasonable costs in this behalf expended.

LAURA E. WILLIAMS.

STATE OF OHIO, }
County of Hamilton, } *ss:*

Personally appeared before me, a notary public in and for said county and State, Laura E. Williams, who is known to me, who, being first duly sworn, deposes and saith that the statements made in the foregoing answer are true to the best of her knowledge, information, and belief.

—— ——.

Sworn and subscribed before me this the 29th day of August, 1887.

WM. HOUK,
Notary Public.

[SEAL.]

Filed in office December 3rd, 1887.

J. W. DIMMICK, *Clerk.*

718 *Clerk's Certificate of Publication to Non-Resident Defendants.*

Notice.

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

PRESTON B. PLUMB, Trustee,
vs.
BRIERFIELD COAL AND IRON COMPANY *et als.* } 103.

Now comes the solicitors of complainant and move the court for an order of publication to the said Carrie S. Plumb, Justin S. Morrill, George I. Seney, Calvin S. Brice, Samuel Thomas, and Laura E. Williams, and M. S. Pomeroy, the non-resident defendants mentioned in said bill; and it appearing to the court that the said Carrie S. Plumb resides at Emporia, in the State of Kansas, and the said Justin S. Morrill resides in Strafford, in the State of Vermont, and the said George I. Seney, Calvin S. Brice, and Samuel Thomas each reside in the city and State of New York, and said Laura E. Williams resides at Cincinnati, Ohio, and M. S. Pomeroy resides at Washington, District of Columbia, and that personal service upon them is not practicable:

It is therefore ordered and decreed by the court that the clerk of this court do forth- make publication to each of them in the Daily Montgomery Advertiser, a public newspaper published at Montgomery, Alabama, once a week for six consecutive weeks, requiring each of them to appear, plead, answer, or demur to the bill of complaint in this cause within thirty days after said period of six weeks shall expire, or that at the next rule day after said period of thirty days shall expire a decree *pro confesso* will be rendered against each of them upon said bill of complaint and all the allegations
719 of said bill of complaint as against them be taken as confessed, and the clerk of this court will mail to each of them one copy of said newspaper containing said order of publication, properly directed to each of them at their places of residence aforesaid, postage prepaid, marking said notice of publication with ink so as to call the attention of said above-named defendants thereto.

Witness Hon. Morrison R. Waite, Chief Justice Supreme Court of the United States, this 6th day of August, 1887.

J. W. DIMMICK,
Clerk U. S. Circuit Court of Middle District of Alabama.

UNITED STATES OF AMERICA, } ss:
Middle District of Alabama, }

I, J. W. Dimmick, clerk of the circuit court of the United States for the middle district of Alabama, do hereby certify that the printed notice, of which the foregoing is a true copy, was given to Carrie S. Plumb, Justin S. Morrill, George I. Seney, Calvin S. Brice, Samuel Thomas, Laura E. Williams, and M. S. Pomeroy, defendants, in the Montgomery Daily Advertiser & Mail, a newspaper printed and published in the city and county of Montgomery and State of Alabama, for six consecutive weeks, in accordance with the order of the Hon. John Bruce, requiring notice to non-resident defendants.

Filed Aug. 4th, 1887.

In testimony whereof I have hereunto set my hand and [SEAL.] caused the seal of said circuit court to be affixed at Montgomery, in said district, this 2ond day of January, A. D. 1888.

J. W. DIMMICK,
Clerk U. S. Cir. Court, Mid. Dist. of Alabama.

Filed this 2nd day of Jan'y, A. D. 1888.

J. W. DIMMICK, *Clerk.*

720 *Petition for Order Granting Leave to Issue* $27,000.00 *of Trustee Certificates, &c.*

In the Circuit Court of the United States for the Middle District of Alabama.

W. L. CHAMBERS, Trustee,
vs.
THE BRIERFIELD COAL & IRON COMPANY. } In Equity. No. 103.

To the Hon. the judges of said court:

The petition of Wm. L. Cambers, as trustee, the complainant in above bill, respectfully shows unto your honors—

1st. That in the petition filed heretofore by Preston D. Plumb, late trustee, in this cause, praying an order for issuance of certificates of indebtedness to raise money for payment of liens on and preservation of the trust property, the following claims, which are for the purchase-money of lands and which are liens on said lands, were inadvertently omitted, viz:

Balance due Wm. D. & K. Carter, Jr.	$3,900 00
" est. B. B. Lewis, dec'd	700 00
" French Nabors	2,500 00
In all	7,100 00

and prompt payment of which is necessary in order to prevent the sacrifice of a valuable portion of the company's lands.

Your petitioner further shows that the blast furnace which is now

in operation needs a new lining, and that in consequence of the defective lining now in use the cost of pig-iron produced is considerably enhanced and the value of the product diminished, the iron now produced being of inferior quality, known as mill iron, which is worth in the markets about two dollars per ton less than the iron
721 which could be produced if the furnace were in good condition; that in the present condition of said lining there is danger that the furnace will be stopped by the hap-ening of accidents that are common to furnaces in such condition; that the repairs needed on the furnace to place it in good condition, increase its production, lessen the cost, and increase the selling price of the product consist of, to wit:

New lining of brick and stone, cost	$3,100 00
New bell and castings and labor to repair, cost	1,500 00
Making total repairs	$4,600 00

Petitioner further shows that the product of the furnace and all income from said property has been used in operating the furnace and developing a new mine of coal which had been partially opened and developed by the Brierfield Coal & Iron Co. before the said Plumb as trustee took possession of the said property; that the old coal mine had been used for years, and its operation is expensive because the coal now being mined is situate so far from the hoist by which it is carried to the surface, and to obviate this increased expense a new shaft and hoist would be necessary, which would be very expensive. In order to avoid this expense the said Brierfield Coal & Iron Co. had, as before stated, partially opened and developed the said new mine with a view to abandoning the old one. There is at the said new mine all the machinery for driving four drills for mining coal, which cost $2,500.00, but there is but one drill. Another drill, which will cost about three hundred dollars, is necessary to expedite and satisfactorily and economically complete the opening, development, and operation of said new mine.

Petitioner further shows that in order to repair said furnace and place it in operation it will be necessary that it should "go out of blast" for about thirty days, during which time there would be no income from sale of iron or other products, and the expenses of mining ore, coal, and limestone and making of coke will con-
722 tinue. The expenses of this mining and preparing the raw material for the manufacture of iron while the furnace is being repaired will be about ten thousand dollars.

Petitioner further shows that there is on the property in his charge as trustee an extensive rolling-mill plant, which cost about one hundred thousand dollars, which is not in operation. Petitioner is informed and believes and so states that said mill can be repaired and be put in successful operation by the expenditure of about five thousand dollars, which would go principally to the purchase of rolls and machinery suitable for the manufacture of merchant bar iron, the said rolling mill having been built for rolling plates for manufacture of nails, not having the rolls for merchant bar. Pe-

titioner is informed and believes and so states that if said rolling mill is put in operation that about forty tons of iron can be rolled per day, for which there is a good demand, at a profit of four dollars per ton over and above the value of the pig iron and cost of rolling, and that in this way the whole product of the furnace could be used — this increased price. Petitioner shows that the amounts above shown to be necessary to the preservation, successful management, and operation of the property are as follows, viz:

Purchase-money of lands	$7,100 00
Repairs of furnace	4,600 00
Mining coal, iron, & lime & making coke	10,000 00
New drill for coal mine	300 00
To put rolling mill in operation	5,000 00
Making total	$27,000 00

and that he has no money with which to pay them.

Petitioner shows further that by the expenditure of said sum the property will be preserved, its value would be greatly en-
723 hanced, and its operation would not only be self-supporting, but a surplus would be realized therefrom, and that unless such expenditure is made the operation of the furnace and mines must of necessity soon cease and the works abandoned, and the labor, of which there is at present a sufficiency in a good state of organization, be disorganized and scattered, to the detriment of said property and a loss of all persons interested.

Petitioner further shows that he has made enquiry as to the matters herein set forth of persons skilled in the operation of *of* works similar to those in his charge, and has had the benefit of their experience and advice, and from his knowledge of such matters and on such information he believes and states that it is to the interest of all persons interested in said property for such expenditure to be made.

Wherefore, the premises considered, petitioner prays your honors for an order authorizing him to issue certificates of indebtedness to the amount of twenty-seven thousand dollars for the purposes herein set forth, like in form and substance to those heretofore authorized by this court and having the same lien and effect, and to be part of the same series as those heretofore authorized.

And in duty, &c., petitioner will ever pray.

W. L. CHAMBERS, *Trustee*,
By THORINGTON & SMITH, *His Sol's.*

THORINGTON & SMITH,
Sol'rs for Petitioner.

STATE OF ALABAMA, }
Montgomery County. }

Before me, J. C. Stratford, a notary public in and for said county, this day personally appeared the within-named W. L. Chambers,

trustee, who, being by me first duly sworn, doth depose and say that the statements contained in the foregoing petition are true according to the best and utmost of information and belief.

W. L. CHAMBERS.

Sworn to and subscribed before me this 7th day of January, 1888.

J. C. STRATFORD,
Notary Public.

Filed the 7th day of January, A. D. 1888.

J. W. DIMMICK, *Clerk.*

724 *Notice of Filing Petition for Leave to Issue Trustee's Certificates, &c.*

In the Circuit Court of the United States for the Middle District of Alabama.

WM. L. CHAMBERS, Trustee,
vs.
BRIERFIELD COAL & IRON CO. and Others. } In Equity. No. 103.

The President of the United — to the marshal of said district, Greeting:

You are hereby commanded to notify C. C. Huckabee & R. L. McCalley, or Watts & Son, their attorney of record, that W. L. Cambers, trustee, has filed a petition to this court for an order granting leave to issue $27,000.00 of trustee's certificates, which shall be a first lien on the property in his possession as trustee of the said Brierfield Coal and Iron Co., for the purposes set forth in said petition, and that motion will be made on Thursday, the 12th day of January, 1888, to grant the prayer of said petition.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 7th day of Jan., A. D. 1888.

J. W. DIMMICK,
Clerk U. S. Cir. Court, Mid. Dist. of Ala.

Received in office Jan. 7th, 1888.

WM. W. ALLEN,
U. S. Marshal.

Served on Jan. 7, '88, on T. H. Watts, Jr., by Somerville, deputy.

W. W. ALLEN,
U. S. Marshal.

Returned, ex., and filed Jan'y 7, A. D. 1888.

J. W. DIMMICK, *Clerk.*

725 103.

Affidavit of Thos. J. Peter on Motion for Issue of Trustee Certificates.

My name is Thomas J. Peter. I am in my fifty-third year of age. I am a civil engineer by profession and have — engagedon pub-

lic works all my business life. For the past ten years I have had charge of coal mines, coke ovens, and iron works. I know the property of the Brierfield Coal and Iron Company, in Bibb and Shelby counties, in the State of Alabama. I — had charge of it as president since the organization of the company. I know that the Brierfield Coal and Iron Company owes a balance on lands purchased from the following parties, to secure which the parties have a mortgage on the property conveyed; that these are the balance-of purchase-money in each case, and that the property is valuable and is necessary to the Brierfield Coal and Iron Company. These balances are in addition to the amounts alread-ordered by the court to be paid on prior liens:

There is due	Wm. D. & K. Carter, Jr., about	$3,900 00
" " "	estate of B. B. Lewis, about	700 00
" " "	French Nabors, "	2,500 00
	Total	$7,100 00

I also state that the Bibb furnace, a part of the property of the Brierfield Coal and Iron Company, burst out and had to go out of blast during last July. It was then discovered that the lining was in very bad condition, but the financial condition of the company forced it to patch up the hearth, bosh, and lining of said furnace as cheaply as it could in order to get it into blast quickly.

That the furnace has been in blast ever since, but that it is in a very precarious condition and is liable to burst at any minute and do great damage; that the furnace should go out of blast at
726 once and be relined; that it will take at least thirty days to do this work, and that the new lining will cost about thirty-one hundred dollars and the necessary castings and labor about fifteen hundred dollars.

That in consequence of its weak and precarious condition it has been unable to make any higher grade of pig-iron than still iron, which is worth in the market from one dollar and a half to two dollars per ton less than foundry iron in the market, and that its capacity has diminished from one thousand tons per month to about eight hundred; that if the furnace were relined as above indicated its capacity would be about twelve hundred tons per month and its grade of pig-iron much improved; that the labor per month at the furnace in producing this iron will not be increased, and that the consumption of coke per ton of pig-iron produced will be considerably diminished; that since this property has been in the hands of a trustee it has had no working capital, but has sold or shipped to commission brokers the pig-iron of this furnace as fast as produced, and that during the time this furnace would be out of blast during these repairs it would have no pig-iron to ship, and that the coal mines, ore banks, coke ovens, and limestone quarries should continue their operation and delivery of material. It is of the utmost importance that every blast furnace should have a supply of coke, ore, and limestone on hand so that if an accident should occur to either mines or quarrys the furnace would not have

to stop. We have been working with a daily supply of each.
727 To pay the laborers in coal mine, ore mines, and limestone quarries during the time of repairing the furnace will take ten thousand dollars. The rolling mill of the Brierfield Coal and Iron Company cost about one hundred thousand dollars and is not in use. The train of rolls was for making nail plate. There is not much demand at present for iron nails, as the steele nails have driven them from market. To prepare guide mill and bar train so as to make merchant iron will cost about five thousand dollars, and then this rolling mill could produce about forty tons of merchant bar iron per day, for which there is a good demand, and on which at present prices there is a profit of about four dollars per ton, and the price of merchant bar for many years has not been so low but that there would have been a fair margin of profit in the manufacturing of it by a rolling as favorably located as is the rolling mill on the property of the Brierfield Coal and Iron Company.

THOMAS J. PETER.

Sworn to and subscribed before me, on this 31st day of December, 1887, a notary public in and for the county of Bibb and State of Alabama.

J. B. JEMISON,
Notary Public.

Filed January 12th, 1888.

728 103.

Affidavit of John G. Murray on Motion of Trustee Certificates.

My name is John G. Murray, and in my thirtieth year of age. For the past five years I have been in the employ of the Brierfield Coal and Iron Company in the capacity of auditor, secretary, and treasurer, and know well the property of the said Brierfield Coal and Iron Company in the counties of Bibb, Chilton, and Shelby, in the State of Alabama. I am also well informed regarding the organization of said company and the management of its affairs from its inception to the present time. I know the Brierfield owes sundry parties balance on purchase-money for real estate as follows in addition to the amount already ordered by the court to be paid on prior liens:

W. D. & K. Carter, Jr., about		$3,900 00
Estate of B. B. Lewis,	"	700 00
French Nabors,	"	2,500 00

I am well acquainted with the art of mining coal, and have a practical knowledge of nearly all systems by which the same is done. I know that it is absolutely necessary that the Brierfield Coal & Iron Company in order to produce coal in any great quantity and with economy develope as rapidly as possible the new mines which has been recently opened by said company. I know from practical experience that these objects of rapid development and economy can both be accomplished by the purchase and use in said mines of an

Ingersol steam or air rock drill in addition to the one now in use there. This drill will cost about $300.00, and the money saved by its use as compared by use of hand drill will pay for itself in three months. The different seams of coal worked from this one mine are separated by intervening strata of slate and sand rock, and the process of reaching one from the other is both tedious and
729 expensive unless drills are driven by steam or compressed air.

JOHN G. MURRAY.

Sworn and subscribed to before me, on this 31st day of December, 1887, a notary public in and for the county of Bibb and State of Alabama.

J. B. JEMISON, *N. P.*

103.

Affidavit of John Veitch.

John Veitch, being duly sworn, deposes and says that I am fifty-one years old; that I have been engaged in charge of blast furnaces mostly in the State of Alabama continuously for about fifteen years; that during the time I have had charge of the following blast furnaces: Irondale, Oxmoor, Allice, and Sloss; that since July 8th I have had charge of the Bibb furnace, on the property of the Brierfield Coal & Iron Company; that when I took charge of it the bosh and lining were in bad shape, and that afterwards, about 8th day of July, the furnace burst out and had to go out of blast; that I relined the hearth and bosh and patched up the lining as best I could and put the furnace again into blast about the 10th day of August; that the furnace has been in constant blast since; that it is certain that the bottom, hearth, bosh, and lining are in very bad condition, and the furnace is liable at any minute to give out, and great damage will be done; the furnace should go out of blast as soon as possible and be relined. In consequence of the condition I have not been enabled to push it so as to produce the amount and higher grad-s of iron that could be produced if the furnace was repaired and in good condition. Owing to its present condition its capacity has diminished from one thousand tons per month to about eight hundred.

If the furnace were relined I confidently believe I can produce twelve hundred tons per month, of which a large portion would be foundry iron, and could do so with the consumption of considerably less coke per ton of iron than now consumed.

JOHN VEITCH.

Sworn to and subscribed before me this 30th day of December, A. D. 1887.

J. B. JEMISON,
Notary Public in and for Bibb County and State of Alabama.

Filed Jan'y 12, 1888.

730 *Answer of John G. Murray.*

In the Circuit Court of the United States for the Middle District of Alabama, on the Equity Side.

PRESTON B. PLUMB, Trustee,
vs.
THE BRIERFIELD COAL & IRON COMPANY and Others. } No. 103.

The separate answer of John G. Murray, one of the defendants in the above-stated cause, to the bill of complaint therein exhibited against him and others.

This respondent, saving and reserving to himself the benefit of objection and exception in said bill of complaint, for answer thereto or to so much thereof as he is advised it is material for him to answer, answering, says:

SECTION 1. That on or about May the 4th, 1882, said Brierfield Coal and Iron Company became and was duly incorporated under that name by proceedings had and obtained, substantially as set out in said bill of complaint, and for the purposes and objects therein stated, with its principal office and place of business at Brierfield, in Bibb county, Alabama, with a capital stock of $750,000.00 authorized, divided into 7500 *hundred* shares of the par value of $100.00 each; and said corporation became and was vested with all the rights, privileges, powers, and franchises vested by the laws of the land in such corporations so organized, and that afterwards, by an act of the General Assembly of the State of Alabama, approved the 12th day of December, 1884, entitled "An act to amend and ratify the charter of the Brierfield Coal and Iron Company, of Bibb county, Alabama," the charter of said corporation was amended and ratified; that subscription- to the capital stock of said company were made by the persons in the amounts set out in said bill of complaint;

731 but respondent does not admit, but denies, that the subscription to the capital stock of said company, made in the name of Plumb and Hood, was in fact made for Carrie S. Plumb; respondent avers that said company sold and issued to him six shares of the capital stock thereof of the par value of $100.00, as set out in said bill, and this respondent then and there paid to said company six hundred dollars therefor, being the par value for the same, and he now owns and holds said six shares. So far as respondent is informed and believes the capital stock of said company was, at the time the bill was filed, held as therein set out, and payments thereon had been made as stated in said bill.

SECTION 2. Respondent admits and avers that said mortgage deed of trust of date of September 1st, 1882, was executed by said Brierfield Coal and Iron Company at the time and for the purpose set out in said bill of complaint, and that said exhibit thereto contained a substantial copy of said mortgage deed of trust, and that the bonds of said company secured by said mortgage deed of trust were issued and sold to the stockholders as set out in said bill of com-

plaint, and your orator is informed and believes were paid for in money at the time of the delivery by the purchasers thereof, and that the same were and are secured by said mortgage deed of trust, and that said deed of trust was duly and legally authorized, made, and executed, and said bonds issued by due authority; that on the 29th day of July, 1887, the said Brierfield Coal and Iron Company made and delivered to said Preston B. Plumb, as trustee, the said mortgage deed of trust described in Exhibit A to said complaint,
and the same was so done under the form and by the authority
732 and for the purpose set out in said bill of complaint. The
trustee aforesaid, Preston B. Plumb, duly and regularly accepted the trust created and imposed in and by said mortgage deed of trust at the time — the respective creation thereof, and said mortgage deed of trust are subsisting valid instrument securing the payment of the said first-mortgage bonds of said company, and in and by the same all the property, rights, and franchises of every kind belonging to said company are conveyed and pledged for the security of said bonds.

SECTION 3. Respondent denies that the said Preston B. Plumb, personally or as trustee or otherwise, has any lien on any of the property of said company for the repayment of any money paid by him as security for said company or for his indemnity as security for said company, as is alleged and set out in said bill, but, on the contrary, he avers that on account of the same he is and will be only a common creditor without any prior equitable or legal right of indemnity and satisfaction.

SECTION 4. Respondent says that it is true said company owed large sums of money which it was unable to pay and had made default in the payment of the interest on bonds and in the payment of wages to its laborers and in the payment of unsecured debts, and that its credit was greatly impaired, and that it could not procure the necessary funds for its operating expenses and to meet is liabilities, and that it had expended vast sums of money in the purchase of property and in its development, and that it owned a large and valuable property capable, under proper conditions, of yielding revenue sufficient to pay its indebtedness and reasonable dividends
to its stockholders, and that a forced sale of the property of
733 said company under said mortgage deed of trust would likely
result in great loss to the stockholders, bondholders, and general creditors of said company; and that said complainant, as trustee, did, as averred in said bill of complaint, demand*ed* and receive possession of said property and appoint this respondent as general manager.

SECTION 5. Further answering, respondent says that on or about November 23rd, 1883, this respondent purchased from said Brierfield Coal and Iron Company one of its said first mortgage bonds of the denomination of one thousand dollars and numbered 283, issued under the authority hereinbefore set out and secured by said mortgage deed of trust, and then and there paid to said company in cash therefor the sum of nine hundred dollars, and he still owns and holds said bond. This defendant further says that on or about March

10th, 1887, the Brierfield Coal and Iron Company borrowed from the Commercial Bank of Selma twenty-five hundred dollars and executed its note therefor, payable at said bank six months from the date thereof, and on March 18th, 1887, borrowed from said bank the further sum of twenty-five hundred dollars and executed its note therefor, payable at said bank six months from the date thereof. Said money was so borrowed by said company for the purpose of meeting the legitimate obligations of said company, and went into the treasury of said company, and was duly paid out in the payment of the lawful obligations of the company. At the time each of said above-named sums of money was so borrowed and notes given the said Brierfield Coal and Iron Company and
734 Thos. J. Peter, who was then the president thereof, requested this respondent to become the surety of said company for said loans and then and there promised and agreed to indemnify and secure respondent against all loss and damage by reason of so becoming surety, and in pursuance of such request and agreement this respondent did endorse each of said notes, and said Brierfield Coal and Iron Company did then and there deliver to respondent, in pursuance of the said promise and for the purpose of securing and protecting this defendant as such accom-odation endorser, the following of its said first-mortgage bonds, each of the denomination of one thousand dollars, namely, bonds numbered, respectively, 371, 372, 373, 446, 447, 448, and 449, being in all seven of said first-mortgage bonds.

Respondent has paid the first note for twenty-five hundred dollars, herein mentioned, in full, and is now paying in monthly installments the other one which he will also have to pay in full, and he is now the holder of said first-mortgage bonds numbered 371, 372, 373, 446, 447, 448, and 449. This respondent avers that he acquired all of the said first-mortgage bonds for full value as hereinabove set out in good faith and without any knowledge or notice of any defects, dif-erences, or irregularities, if any there be, and in the usual and ordinary course of business, and he avers that for the amount of said bonds so held by him, according to the tenor and effect thereof, he is invested with a first lien on all the property of the said Brierfield Coal & Iron Company of every kind and description, real and personal, choses in action, credits and franchises, prior and superior to any and all other rights thereto and liens thereon whatsoever, except the rights and liens of other bond-s of the
735 same issue who are *bona fide* holders for value, if such there be, and except such liens for unpaid purchase-money, if any there be, and this defendant denies that any lien or charge can be placed on said property prior or superior or equal to the lien of said first-mortgage bonds.

SECTION 6. So far as this defendant is informed the following persons are the holders of the first-mortgage bonds of said Brierfield Coal and Iron Company:

E. A. Peter	218	T. J. Peter	71
M. S. Pomeroy	9	C. S. Plumb	100
G. I. Seney	40	C. S. Brice	3
Samuel Thomas	27	J. S. Morrill	11
J. T. Fitzgerald	13		

this respondent, 8. So far as respondent is informed and believes the following persons owe for subscriptions to the capital stock of the Brierfield Coal and Iron Company:

Plumb and Hood	$ 50,000 00
C. S. Plumb	6,900 22
G. I. Seney & associates	27,645 00
C. C. Huckabee	12,834 00
Justin S. Morrill	3,730 00

SECTION 7. Respondent avers that in and by said mortgage deed of trust, executed by the Brierfield Coal & Iron Company, which bears date September 1st, 1882, it is provided that the said trustee shall have full power in his discretion, upon the written request of the said company, to sell, convey, and exchange any of the property owned by said company or thereafter acquired which may be proper or necessary to be sold, conveyed, or exchanged in the operation or conduct of the business of the company, and which may be-
736 come unnecessary in the transaction of the business thereof, and it is further provided therein that said company may sell and dispose of any property not necessary for the transaction of the business which can be sold without loss or at a fair price, and to make, acknowledge, and deliver proper conveyances to carry the same in effect.

That about the 13th day of April, 1887, the said Brierfield Coal and Iron Company sold and conveyed and delivered to F. F. Gage the following described lots or parcels of land, to wit, lots 1 to 15, both inclusive, in block two; lots one, two, five, six, seven, eight, and nine in block three; lots one, two, three, four, five, and six in block twenty-three; lots one, two, three, four, six, seven, nine, and ten in *in* block twenty-four; the whole of block twenty-five (25); lots one, two, three, six, seven, eight, nine, ten, eleven, and twelve in block twenty-two, and lots eight, nine, ten, eleven, and twelve in block eighteen—making in all seventy-six lots, all situated in section thirty, township twenty-four, north of range twelve east, and in the town of Brierfield, in Bibb county, Alabama, and so numbered on the map of said town. The said sale and conveyance of said property was made by the authority of the board of directors of said company duly had and given, and the conveyance was made by said company to said Gage on the 13th day of April, 1887, and was executed by said company by and through Thomas J. Peter, as and who was then its president, and attested by Edward T. Peter, as and who was then its secretary, and the execution of said deed was duly acknowledged by said company on the 13th day of April, 1887, before S. R. Sheppard, who was then and there a justice of the peace
737 for Bibb county, Alabama, and has been recorded in the pro-

bate office of Bibb county. The assent of said Preston B. Plumb, as such trustee to said sale and conveyance, was made and given in writing by him as trustee, endorsed on said deed, on the 18th day of April, 1887; said deed was delivered to F. F. Gage a short time after the said written consent of said trustee; the purchase-money of said lots was the sum of $8,500.00, and the same was paid by said Gage to said company at the time of the delivery of said deed. In purchasing said property said Gage did so for the benefit of business, this respondent, Edward T. Peter, Thomas Harrison, Charles L. Bates, James S. Morrill, W. D. Carter, M. L. Howell, and W. K. Campbell, all residents of said town of Brierfield, each of whom furnished his *pro rata* share or part of said money; a copy said deed to F. F. Gage is hereto attached, marked Exhibit A, and made and prayed to be taken as a part hereof, said copy contains also a copy of the probate of said deed, and of the probate judge's certificate of filing and record, and a copy of the written assent of said trustee on the 9th day of May, 1887. The said F. F. Gage, by deed duly executed by himself and his wife, conveyed to this respondent and his other said associates an undivided fifteen seventenths interest in said lots of land which deed has been duly recorded in said probate office of Bibb county, and said lands are now owned by this respondent and his said associates as conveyed as aforesaid, a copy of said deed from said Gage and his wife, with the copy of the probate and record thereof, is hereto attached and marked Exhibit B, and made and prayed to be taken as a part hereof.

738 This respondent further alleges that in April, 1887, the said Brierfield Coal and Iron Company sold and conveyed to Charles L. Bates, of Brierfield, the following lots or parcels of land in the town of Brierfield, in Bibb county, Alabama, so numbered on the plat of said town herein above alluded to, to wit, block twenty-one, lots thirteen and fourteen in block eighteen, and said *said* company conveyed *conveyed* said lots of land to said Bates by its deed, bearing date April 13th, 1887, executed by Thomas J. Peter as, and who was then, the president thereof, and attested by E. T. Peter, as and who was then the secretary thereof, and said deed was duly probated before S. R. Sheppard, as justice of the peace, and on the 17th day of May, 1887, was filed for record in the probate office of Bibb county. The said Preston B. Plumb, as trustee, assented to said sale and conveyance, and endorsed his assent in writing thereto on said deed on the 18th day of April, 1887. A copy of said deed and of the probate thereof, and of the probate judge's certificate of filing and record, and of the assent of said trustee, is hereto attached, marked Exhibit C, and made and prayed to be taken as a part hereof. The purchase price of said lots was six thousand dollars, and the same was paid to said company and the delivery of said deed to said Bates. The purchase of said lots of land was made by the said Bates for the benefit of himself, this respondent, and Edward T. Peter, each of whom furnished his *pro rata* of the purchase money of the same on the 9th day of May, 1887. Said Charles L. Bates, by deed executed by himself and wife sold and *sold and* conveyed said lots of land to this respondent and to

said Edward T. Peter, who now own and hold the same. A copy of the deed from Charles L. Bates and wife is hereto attached,
739 with copy of the probate and record thereof, marked Exhibit D, and made and prayed to be taken as a part hereof. Respondent avers that all the above described lots of land so conveyed to said F. F. Gage and to Charles L. Bates, and afterwards to this respondent and said associates, as set out, were and are what is known as town lots, useful and intended for locations for the erection of residences and the like, and were not in whole or part at the time of such sale, nor since, nor prior thereto, necessary for the transaction of the business of said company. The same did not form a part of the productive property of said company, and was not used in nor needed in the operation of the affairs of said company nor in its business, and respondent avers that said lots and each of them were so sold without any loss to said company, and at a fair price, and that the purchase money therefor was paid to said trustee, as provided for in said mortgage deed of trust. Respondent avers that said company had the full and free right and the assent of said trustee to sell said lots of land, as was done, and to convey the same, as was done, and said purchaser and those claiming under and through that, including this respondent, have acquired and now have a full, clear, fee-simple title to said lots of land, free from the liens of said mortgage deeds of trust and said bonds, and from all other liens and claims, and neither the said company nor said trustee, nor any other person or persons, except those claiming under said deeds, of which copies are hereto annexed, as heretofore stated, have claim or title to the same. Re-
740 spondent avers that he and the said named owners of the said lots are entitled in this honorable court to have their said title thereto and possession thereof protected, and he respectfully asks the protection of this court therein for himself, and, if it be allowed by the rules and practice of this court, he asks the protection of the court for his said associate owners, and that in all the proceedings in this cause said conveyance and title be recognized and enforced.

SECTION 8. Respondent further avers that in the month of April or May, 1887, which not now recollected, there existed a club, composed of this respondent and others, in said town of Brierfield, known as the Hematite Club, being an unincorporated association, having for its objects the social and literary advancements and enjoyments of its members. At the time above stated it was agreed by and between said Brierfield Coal & Iron Company, said Preston B. Plumb, as trustee, and this respondent and the other members of the said club that there should be conveyed to this respondent and the other members of said club, for the use of said club, the tract of land hereinbelow described, and *and* said club *said club* should at their own expense erect a club-room thereon. The said land was not included in the map of said town of Brierfield, and a conveyance of the same to said club was delayed for the purpose of ascertaining the plat number of the land, it being then intended and expected by said company to extend the plat of said town so as to cover this and other lands;

741 but said company then and there, with the knowledge, consent, and approbation of said trustee, deliver- said property to said club as their own property and for the uses and purposes set out, and since that time said club have erected on said property a club-house in pursuance of their said agreement, and are now entitled to a deed to said property. The said property is described as follows: Begin-ing at the intersection of the public road and the west side of Mahon's creek, in the N. E. ¼ of the S. W. ¼ of section 19, township twenty-four, range twelve east, and bounded as follows: on the east by the creek aforesaid, on the south by the public road, on the west by the right of way of the mine railroad, and on the north by a line paral-el to the public road and intersecting right of way of the mine railroad by a point two hundred feet north of the intersection of the public road with said mine railroad.

Respondent avers that he and his said associate members of said club are entitled to be protected in the enjoyment and possession of said lot of land and to have a conveyance made to them in pursuance of said promise and agreement to that end, and he asks this honorable court to protect and enforce his right in the premises, and, so far as it is allowable for him to ask, to protect and enforce the rights of his associate members in the premises.

And now, having fully answered said bill of complaint or so much thereof as he is advised it is material for him to answer, that respondent begs to be hence discharged with his reasonable cost in this behalf expended.

JOHN G. MURRAY.

John G. Murray, known to me, being duly sworn, deposes and says that the allegations and statements in the foregoing answer, when stated of his own knowledge, are true in substance and
742 fact as therein stated, and when stated on information and belief he believes the same to be true.

JOHN G. MURRAY.
MARKS & MASSIE,
Sol'rs for Respondent, John G. Murray.

Sworn to and subscribed before me this the 31st day of December, A. D. 1887, by said John G. Murray.

J. B. JEMISON,
Notary Public.

103.

EXHIBIT A.

STATE OF ALABAMA, }
County of Bibb. }

Know all men by these presents that, in consideration of the sum of eighty-five hundred dollars paid to the Brierfield Coal and Iron Company, a body corporate under the laws of the State of Alabama, by F. F. Gage, of Brierfield, Bibb county, State of Alabama, the receipt whereof is hereby acknowledged, the said Brierfield Coal and

Iron Company, by authority of its board of directors, as evidenced by the signature of its president and secretary, doth hereby grant, bargain, sell, and convey to the said F. F. Gage the following-described real estate, situate in section 30, town. 24 north, range 12 east, in the county of Bibb, State of Alabama, and more particularly described as follows, to wit: Lots numbered one to fifteen, both inclusive, in block two; lots numbered one, two, five, six, seven, eight, and nine, in block three; lots numbered one, two, three, four, five, and six, in block twenty-three; lots numbered one, two, three, four, six, seven, nine, and ten, in block twenty-four; the whole of block twenty-five; lots numbered one, two, three, six, seven, eight, nine, ten, eleven, and twelve, in block twenty-two, and lots numbered from eight to twelve, both inclusive, in block eighteen, of the map of the town of Brierfield as laid out and platted by the
743 said Brierfield Coal and Iron Company, the said Brierfieid Coal and Iron Company reserving for its self and assigns for all time the right to lay, repair, and maintain and remove water and gas pipe in the streets and alleys on which said lots & blocks abut; to have and to hold to the said F. F. Gage, his heirs and assigns forever; and the said Brierfield Coal and Iron Company hereby warrant same, — will forever defend a good and lawful title to the above lands to the said F. F. Gage, his heirs and assigns.

Witness the official signature of the Brierfield Coal and Iron Company, by its president, and attested by its secretary, this the 13th day of April, A. D. 1887.

(Signed) BRIERFIELD COAL & IRON COMPANY,
By T. J. PETER, *Pres't.*

Attest:
[SEAL.] EDW. T. PETER, *Sec.*

I hereby assent to the above conveyance.
Witness my hand and seal this the 18th day of April, A. D. 1887.
(Signed) PRESTON B. PLUMB, *Trustee.*

STATE OF ALABAMA, }
Bibb County. }

I, S. R. Sheppard, a justice of the peace in and for said county and State, hereby certify that T. J. Peter, president of the Brierfield Coal and Iron Company, whose name is signed to the foregoing conveyance and who is personally known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he extended the same voluntarily on the day the same bears date.

In witness whereof I have hereto set my hand this the 13th day of April, A. D. 1887.

(Signed) S. R. SHEPPARD, *J. P.*

744 DISTRICT OF COLUMBIA:

I, J. W. Howell, a notary public in and for said District, hereby certify that P. B. Plumb, trustee, whose name is signed to the fore-

going conveyance and who is personally known to me, acknowledged before me that, being informed of the contents of the said conveyance, he executed the same on the day the same bears date.

In witness whereof I have hereunto set my hand and *national* seal this 18th day of April, A. D. 1887.

(Signed) J. W. HOWELL,
[SEAL.] *Notary Public.*

THE STATE OF ALABAMA, }
Bibb County. }

I hereby certify that the within conveyance was filed in my office for record on the 17th day of May, 1887, and duly recorded in volume H, page- 488 & '9, on the 17th day of May, 1887.

(Signed) JOHN S. GARDNER,
Judge of Probate.

EXHIBIT B.

STATE OF ALABAMA, }
County of Bibb. }

Know all men by the- presents that, in consideration of the sum of one dollar to us in hand paid by John G. Murray and Edward T. Peter, Thomas Harrison, Charles L. Bates, James S. Morrill, W. D. Carter, M. L. Howell, and W. L. Campbell, all of Brierfield, Bibb county, Alabama, the receipt whereof is hereby acknowledged, we do grant, remise, release, quitclaim, and convey to the said John G. Murray, Edward T. Peter, Thomas Harrison, Charles L. Bates, James S. Morrill, W. D. Carter, M. L. Howell, and W. L. Campbell all our right, title, and interest and claim in or to an undi-
745 vided fifteen-seventeenths interest in or to the following-described real estate in section (30) thirty, township twenty-four (24) north, of range twelve (12) east, in the county of Bibb, State of Alabama, more particularly described as follows, to wit: Lots numbered one (1) to fifteen (15), both inclusive, in block two (2); lots numbered one, two, five, six, seven, eight, and nine, in block three; lots numbered one, two, three, four, five, and six, in block twenty-three; lots numbered one, two, three, four, six, seven, nine, and ten, in block twenty-four; the whole of block twenty-five; lots numbered one, two, three, six, seven, eight, nine, ten, eleven, and twelve, in block twenty-two; lots numbered from eight to twelve, both inclusive, in block eighteen, of the map of the town of Brierfield as laid out and platted by the Brierfield Coal & Iron Company, each of the aforesaid parties acquiring an undivided interest in and to and owning the above-described real estate as follows: John G. Murray, six-seventeenths; Edward T. Peter, two-seventeenths; Thomas Harrison, three-seventeenths; Chas. L. Bates, one-seventeenth; James S. Morrill, one-seventeenth; W. D. Carter, one-seventeenth; M. L. Howell, one-thirty-fourth; W. L. Campbell, one-thirty-fourth:

To have and to hold to the said John G. Murray, Edward T. Peter,

Thomas Harrison, Chas. L. Bates, Jas. S. Morrill, W. D. Carter, M. L. Howell, and W. L. Campbell, their heirs and assigns forever.

Witness my hand and seal this 9 day of May, A. D. 1887.

(Signed) F. F. GAGE.
E. H. GAGE.

THE STATE OF ALABAMA, }
Bibb County. }

I, S. R. Sheppard, a justice of the peace in and for the State and county aforesaid, hereby certify that F. F. Gage — E. H. Gage, his wife, whose names are signed to the foregoing conveyance
746 and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, the- executed the same voluntarily on the day the same bears date.

Given under my *my* hand this 13th day of May, A. D. 1887.

(Signed) S. R. SHEPPARD, *J. P.*

THE STATE OF ALABAMA, }
Bibb County. }

I hereby certify that the within conveyance was filed in my office for record on the 17th day of May, 1887, and duly recorded in vol. H, *of* page- 494 & '5, on the 19th day of May, 1887.

(Signed) JNO. S. GARDNER,
Probate Judge.

EXHIBIT "C."

STATE OF ALABAMA, }
County of Bibb. }

Know all men by these presents that, in consideration of the sum of six hundred dollars paid to the Brierfield Coal and Iron Company, a body corporate under the laws of the State of Alabama, by Charles L. Bates, of Brierfield, Bibb county, State of Alabama, the receipt whereof is hereby acknowledged, the said Brierfield Coal and Iron Company, by authority of its board of directors, as evidenced by the signature of its president and secretary, doth hereby grant, bargain, sell, and convey to the said Charles L. Bates the following-described real estate, situate in section thirty (30), township twenty-four (24) north, of range twelve (12) east, in Bibb county, State of Alabama, and more particularly described as follows: Block twenty-one and lots numbered thirteen and fourteen, in block eighteen, of the map of the town of Brierfield as laid out and platted by the said Brierfield Coal and Iron Company, the said Brierfield Coal and Iron Company reserving for itself and assigns for
747 all time the right to lay, repair, maintain, and remove water and gas pipe in the streets and alleys on which said blocks and lots abut; to have and to hold to the said Charles L. Bates, his heirs and assigns forever; and the said Brierfield Coal and Iron Company hereby warrants and will forever defend a good and law-

ful title to the above lands to the said Charles L. Bates, his heirs and assigns.

Witnes- the official signature of the Brierfield Coal & Iron Company, by its president, and attested by its secretary, on the 13th day of April, A. D. 1887.

(Signed) BRIERFIELD COAL & IRON COMPANY,
By T. J. PETER, *Pres't.*

Attest: E. T PETER, *Sec'y.*

I hereby assent to the above conveyance.

Witnes- my hand and seal this eighteenth day of April, A. D. 1887.

(Signed) P. B. PLUMB, *Trustee.*

THE STATE OF ALABAMA, }
Bibb County. }

I, S. R. Sheppard, a justice of the peace in and for said county and State, hereby certify that T. J. Peter, president of the Brierfield Coal & Iron Company, whose name is signed to the foregoing conveyance and who is personally known to me, acknowledged before me on this day that, being informed of the contents of said conveyance, he executed the same voluntarily on the day the same bears date.

In witnes- whereof I have hereunto set my hand this the thirteenth day of April, A. D. 1887.

(Signed) S. R. SHEPPARD, *J. P.*

DISTRICT OF COLUMBIA :

I, J. W. Howell, a notary public in and for said District, hereby certify that P. B. Plumb, trustee, whose name is signed to the
748 foregoing conveyance and who is personally known to me, acknowledged before me that, being informed of the contents of the said conveyance, he executed the same on the day the same bears date.

In witness whereof I have hereunto set my hand and *national* seal this eighteenth day of April, A. D. 1887.

(Signed) J. W. HOWELL,
Notary Public

THE STATE OF ALABAMA, }
Bibb County. }

I hereby certify that the within conveyance was filed in my office for record on the 17th day of May, 1887, and duly recorded in vol. H, page 490, on the 18th day of May, 1887.

(Signed) JOHN S. GARDNER,
Judge of Probate.

EXHIBIT D.

STATE OF ALABAMA, }
Bibb County. }

Know all men by these presents that, in the consideration of the sum of one dollar to us in hand paid by John G. Murray and Edward T. Peter, the receipt whereof is hereby acknowledge-, we grant, remise, release, and quitclaim, and convey to the said John G. Murray and Edward T. Peter all our right, title, and interest and claim in or to the following-described real estate, each by this deed acquiring an undivided one-half interest in and to said real estate, situate in section thirty (30), township twenty-four (24) north, of range twelve (12) east, in Bibb county, State of Alabama, and more particularly described as follows: All of block twenty-one (21) and lots numbered thirteen (13) and fourteen (14), in block eighteen (18), of the map of the town of Brierfield as laid out and platted
749 by the Brierfield Coal and Iron Company:

To have and to hold to the said John G. Murray and Edward T. Peter, their heirs and assigns forever. Witness our hands and seals this 9th day of May, 1887.

(Signed) CHAS. L. BATES.
" LOUISA E. BATES.

THE STATE OF ALABAMA, }
Bibb County, }

I, S. R. Sheppard, a justice of the peace in and for said county and State, hereby certify that Charles L. Bates and Louisa E. Bates, his wife, whose names are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand this 9th day of May, A. D. 1887.

(Signed) S. R. SHEPPARD,
Justice of the Peace.

THE STATE OF ALABAMA, }
Bibb County. }

I hereby certify that the within conveyance was filed in my office for record on the 17th day of May, 1887, and duly recorded in vol. H, page 490, on the 18th day of May, 1887.

(Signed) JNO. S. GARDNER,
Judge of Probate.

Filed January 12th, 1888.

J. W. DIMMICK, *Clerk.*

750 *Substituted Answer of the Brierfield Coal & Iron Co.*

In the Circuit Court of the United States at Montgomery, State of Alabama. In Equity.

PRESTON B. PLUMB, Trustee,
vs.
THE BRIERFIELD COAL AND IRON COMPANY and Others. } No. 103.

The said Brierfield Coal and Iron Company, one of the defendants in said cause, by leave of the court amends its answer heretofore filed in said cause by striking out said answer and by filing in lieu of said answer the following:

SECTION 1. This defendant says that the Brierfield Coal and Iron Company was organized on or about May 4th, 1882; that the subscriptions to the capital stock of said company were as follows:

T. J. Peter and associates	$120,000 00
E. A. Peter	50,000 00
R. L. McCalley	5,000 00
C. C. Huckabee	15,000 00
G. I. Seney and associates	75,000 00
C. S. Plumb	50,000 00
Plumb & Hood	50,000 00
Justin S. Morrill	10,000 00

that to this stock subscription T. J. Peter signed the names of all the parties, except of R. L. McCalley and C. C. Huckabee, who each signed for himself. On this subscription thus made this corporation was organized on or about May the 4th, 1882; that a few days thereafter and as of May 4th, 1882, and in order to avoid questions which might arise as to the subscriptions to the capital stock, the same amount of stock for each of the above parties, not as an additional subscription, but as a confirmation of the stock subscribed as above stated, was made, as follows: Thomas J. Peters signed for himself and associates, and he also signed for his wife, E. A.
751 Peter, by her authority; R. L. McCalley, C. C. Huckabee, and Justin S. Morrill each signed for himself; the name of G. I. Seney and associates was signed by Samuel Thomas, one of said associates; the name of C. S. Plumb was signed by her husband, Preston B. Plumb; the name of Plumb and Hood was signed by Preston B. Plumb, one of the parties; that on said subscriptions to the capital stock T. J. Peter paid eighty-three thousand six hundred and forty dollars and eighty-five cents, and used seventy-one of the first-mortgage bonds of this company belonging to said T. J. Peter as collateral for the following loans, on which he was for this company an accom-odation endorser, under an agreement with this defendant that said T. J. Peter was not to be called upon to pay the remainder of his subscription to the capital stock of said company until this defendant paid the loans upon which he was accom-oda-

tion endorser and returned to him the said bonds which he had loaned to this defendant to use as collateral security for said loans. These loans were fourteen thousand dollars to the City National Bank of Selma, upon which loan twenty-eight bonds of the first mortgage of the Brierfield Coal and Iron Company, each for one thousand dollars, belonging to said T. J. Peter, were used as collateral security.

To the Commercial Bank of Selma the sum of twenty-two thousand five hundred dollars, upon which twenty-seven of the first-mortgage bonds of the Brierfield Coal and Iron Company, each for one thousand dollars and each belonging to said T. J. Peter, were deposited as collateral security.

To the Alabama National Bank of Birmingham the sum of eight thousand dollars, upon which nine of the first-mortgage bonds of the Brierfield Coal and Iron Company, each for one thousand
752 dollars and each belonging to said T. J. Peter, were deposited as collateral security.

To J. T. Fitzgerald, Marion, Alabama, seven of the first-mortgage bonds of the Brierfield Coal and Iron Company, each for one thousand dollars and each belonging to said T. J. Peter, were deposited as collateral security, together with other bonds on a loan of fifteen thousand dollars.

That Esther A. Peter did pay the sum of fifty thousand dollars in cash to the said Brierfield Coal and Iron Company, being the amount of her subscription in full.

That said Robert L. McCalley did pay in property the sum of five thousand dollars to said Brierfield Coal and Iron Company, being the amount of his subscription in full.

That said C. C. Huckabee paid to the said Brierfield Coal and Iron Company in property the sum of two thousand one hundred and sixty-six dollars on his stock subscription to said company, and this was all that was paid.

That — the subscription of G. I. Seney and associates Samuel Thomas paid the sum of twenty-three thousand seven hundred and forty-five dollars, Calvin S. Brice paid the sum of eight hundred and ten dollars, and G. I. Seney paid the sum of twenty-two thousand eight hundred dollars—and this was — that was paid on said subscription to the capital stock of the Brierfield Coal and Iron Company.

That on the subscription of C. S. Plumb and Plumb and Hood said C. S. Plumb has paid the sum — forty-three thousand and eighty-nine and $\frac{78}{100}$ dollars to said Brierfield Coal and Iron Company.

That on the subscription of Justin S. Morrill to the capital stock of said company said Justin S. Morrill has paid the sum of six thousand two hundred and seventy dollars to said Brierfield Coal and Iron Company.

753 That on July 9th, 1884, the said Brierfield Coal and Iron Company called on its stockholders for a payment of twenty per cent., and on August 20th, 1885, said company called on its stockholders for an additional payment of seven per cent., and on January 1st, 1886, said company called on its stockholders for an addi-

tional payment of thirty per cent. of their several subscriptions; that no certificate- of stock have been issued to Robert L. McCalley or C. C. Huckabee.

That there were issued to T. J. Peter twelve hundred shares of the capital stock of the Brierfield Coal and Iron Company, which was subsequently transferred as follows: One share to Edward T. Peter, one share to Charles L. Bates, five hundred shares to Laura E. Williams, and six hundred and ninety-seven shares to Edward T. Peter as trustee for Esther A..Peter; that there were issued to Esther A. Peter five hundred shares of the capital stock of the Brierfield Coal and Iron Company.

That there were issued to A. O. Beebe on the subscription of G. I. Seney and associates eight hundred and thirty shares of said capital stock by the or-er of Samuel Thomas, but the said A. O. Beebe afterward transferred to Calvin S. Brice thirty shares of said capital stock; that there were issued to C. S. Plumb nine hundred and ninety-nine shares of the capital stock of said Brierfield Coal and Iron Company.

That there were issued to Justin S. Morrill one hundred and ten shares of the capital stock of said Brierfield Coal and Iron Company.

That after said company was organized John G. Murray bought from said company six shares of its capital stock, of one hundred dollars each, and paid said Brierfield Coal and Iron Company
754 the sum of six hundred dollars for said stock.

And this defendant states that in pursuance of a call in that behalf duly made and after and in pursuance of more than thirty days' notice of time and place and purposes thereof, duly given by publication in a newspaper of general circulation published in said county of Bibb, and in accordance with all the requirements of law in such cases, the stockholders of said Brierfield Coal and Iron Company met and assembled in general convention at the office of said company, at Brierfield, Alabama, on the first day of September, A. D. 1882, for the purpose of considering and acting upon the proposition to authorize the creation of a bonded indebtedness of said company to the extent of five hundred thousand dollars and the execution of a proper mortgage deed of trust on the property, real and personal, of said company to secure the payment of such bonded indebtedness; that at said convention all the stockholders of said company were present in person or by proxy and all the stock thereof was duly represented, and that said stockholders' convention, by vote and resolution thereof, duly and unanimously adopted, then and there authorized and directed the creation of said bonded indebtedness and the making and execution of said mortgage deed of trust, of the date, tenor, and effect hereinafter designated.

That on the said 1st day of September, 1882, the said Brierfield Coal and Iron Company duly executed the mortgage deed of trust to Preston B. Plumb, as trustee in the bill of complaint referred to and described, in pursuance of the power and authority aforesaid of its stockholders in general convention assembled, and also by

authority of the board of directors of said company, duly
755 given by a resolution of said board of directors authorizing the president of said company, for and on behalf of the same, to execute the identical mortgage deed of trust which was then and there copied and set out in full on the minutes of said company in the proceedings of the board of directors.

That the corporate name of said Brierfield Coal and Iron Company was subscribed to said mortgage deed of trust in execution thereof by Thomas J. Peter, as and who then was the president thereof, and the common seal of said corporation was attached thereto by John G. Murray, and the same was attested by said John G. Murray, as and who then was the secretary thereof, and the said mortgage deed of trust was duly subscribed by the said Preston B. Plumb as trustee, who thereby accepted the trust therein and thereby created; that the execution of said mortgage deed of trust was duly acknowledged by said company by and throug- the said Thomas J. Peter, the president thereof, in said Bibb county, before Jesse Mahan, who was then and there a justice of the peace in and for said county, and who duly certified the acknowledgement thereof on the 27th day of September, 1882; that said mortgage deed of trust was shortly after the execution thereof duly recorded in the counties respectively of Bibb, Chilton, and Shelby, as appears by the copy thereof attached to the said bill of complaint and marked Exhibit A, and that said Exhibit A sets forth and contains a substantial copy of the said mortgage deed of trust.

SECTION 2. That in pursuance of the direction and authority aforesaid for the creation of such bonded indebtedness of said company and made in accordance with said mortgage deed of trust, the said Brierfield Coal and Iron Company afterwards duly exe-
756 cuted, sold, and delivered sundry of its first-mortgage bonds, each of the denomination of one thousand dollars and each bearing date the first day of October, A. D. 1882, and each payable to the said trustee or bearer or purchaser at the office of said company in the city and State of New York on the first day of October, A. D. 1912, with the proper interest coupons attach- to each for the payment of the semi-annual interest thereon at the rate of six per cent. per annum, and each duly authenticated by the certificate of the trustee endorsed thereon, and each of the form, tenor, and effect more particularly set forth and prescribed in and by said mortgage deed of trust.

Said bonds were sold for cash to the following parties and in the following amounts, in good faith and in the usual and regular course of business, for a then reasonable consideration of ninety per centum of their par value, said sum being more than could be obtained from any other parties than the stockholders who purchased said bonds. Said money for the sale of said bonds was received by this defendant and used in the purchase and developement of its property and in its legitimate business, namely: C. C. Huckabee purchased thirteen bonds, which were issued to bearer, and numbered from 204 to 207, both inclusive, and from 437 to 442, both inclusive, and from 450 to 452, both inclusive. Justin S. Morrill purchased eleven bonds, of which

those numbered from 112 to 117, both inclusive, were issued to bearer, and those numbered from 118 to 122, both inclusive, were registered in the name of said Justin S. Morrill. C. S. Plumb purchased ninety-nine bonds, of which those numbered from 79 to 111, both inclusive, and those from 140 to 179, both inclusive, were issued to bearer, and those numbered from 284 to 305, both inclu-
757 sive, and 309 to 312, both inclusive, and from 489 to 494, both inclusive, were registered *were registered* in the name of C. S. Plumb, and said C. S. Plumb afterwards purchased *purchased* bond numbered 253, which had been issued in the name of A. O. Beebe, but transferred to bearer.

And on the subscription of G. I. Seney and associates there were sold the following bonds, which were issued and registered in the name of A. O. Beebe by the order of Samuel Thomas, namely: Bonds numbered from 128 to 138, both inclusive, and bonds numbered from 251 to 279, both inclusive, and bonds numbered from 280 to 282, both inclusive, and bonds numbered from 41 to 73, both inclusive, and from 139 to 145, both inclusive, and that afterwards bonds numbered from 280 to 282, both inclusive, were transferred to Calvin S. Brice and so registered on the books of the company; and bonds numbered from 41 to 73, both inclusive, and bonds numbered from 139 to 145, both inclusive, were transferred by said Beebe to G. I. Seney and registered in his name on the books of the company, and that afterwards bonds numbered from 253 to 265, both inclusive, were transferred to bearer on the books of the company and were sold as follows: Bond numbered 253 was sold to C. S. Plumb; bonds numbered 262, 263, and 264 were sold to M. S. Pomeroy, of Washington, D. C., and bonds numbered from 254 to 261, both inclusive, and 265 were sold to E. A. Peter; and T. J. Peter purchased and paid for the following-numbered bonds, which are registered to bearer: Bonds numbered 195 to 203, both inclusive; 235 to 240, both inclusive; 371 to 373, both inclusive; 434 to 436, both inclusive; 453 to 458, both inclusive; 208 to 214, both inclusive; 324 to 333, both inclusive; 423 to 433, both inclusive; 241 to 244, both inclusive; 381 to 385, both inclusive; 386 to 389, both inclusive; and bonds numbered 78, 361, and 559.

758 And E. A. Peter purchased and paid for the following-numbered bonds: Bonds numbered 1, 2, 245, 246, and 247, registered in the name of T. J. Peter, trustee for Edward T. Peter, and bonds numbered 3, 4, 248, 249, & 250 were registered in the name of T. J. Peter, trustee for Florence J. Peter, and bonds numbered 5, 6, 189, 190, and 191 were registered in the name of T. J. Peter, trustee for George F. Peter, and bonds numbered 7, 8, 192, 193, & 194 were registered in the name of T. J. Peter, trustee for Blanche E. Peter; and the following-numbered bonds were registered in the name of E. A. Peter, namely: Bonds numbered from 9 to 40, both inclusive, and bonds numbered from 123 to 127, both inclusive, and bonds numbered from 180 to 188, both inclusive, and bonds numbered from 74 to 77, both inclusive; and the following bonds were issued to bearer, namely: From 306 to 308, both inclusive, and from 313 to 319, both inclusive, and from 459 to 488, both inclusive, and from 495 to

500, both inclusive, and from 390 to 422, both inclusive, and from 320 to 323, both inclusive; and the following bonds were registered in the name of T. J. Peter at time of issue, but afterwards transferred to bearer: Bonds numbered from 334 to 358, both inclusive, bonds numbered from 362 to 370, both inclusive, and bonds numbered from 374 to 380, both inclusive, and bonds numbered from 215 to 228, both inclusive, and bond numbered 360, and that afterwards said E. A. Peter purchased from Samuel Thomas bonds numbered from 254 to 261, both inclusive, and bond numbered 265, and that afterward said E. A. Peter sold to M. S. Pomeroy, of Washington, D. C., bonds numbered from 229 to 234, both inclusive.

And John G. Murray purchased and paid for bond numbered 283 and received from the said Brierfield Coal and Iron Company as collateral security for his endorsement of the commercial paper
759 of said company to the amount of five thousand dollars, the proceeds of which paper was used in the legitimate business of this defendant, bonds numbered 443 to 449, both inclusive; and this defendant states that afterwards, and in accordance with the provisions of the original mortgage deed of trust, for further assurances in the premises, the said Brierfield Coal and Iron Company, on the 29th day of July, 1887, for the purpose of further securing the payment of the five hundred bonds in the original mortgage deed of trust mentioned, executed and delivered to the said Preston B. Plumb, as trustee, another mortgage deed of trust, bearing date the 29th day of July, 1887; that the said last-mentioned deed of trust was duly authorized by the board of directors of said company in and by a resolution of sa-d board of directors duly adopted at a regular meeting thereof and entered on the minutes of the proceedings of said board of directors, and the same was duly executed by said Brierfield Coal and Iron Company by and through Thomas J. Peter as and who then was the president thereof, and the common seal of said corporation was thereto attached and duly attested by the secretary thereof, and the execution of said mortgage deed of trust was also duly attested by two subscribing witnesses, and the same was shortly afterwards probated and duly recorded in the said counties, respectively, of Bibb, Chilton, and Shelby (wherein was and is situated the property, real and personal, thereby granted and conveyed), as ap-ears in and by the copy of said last-mentioned mortgage deed of trust attached to the bill of complaint, which contains a substantial copy of said last-mentioned mortgage deed of trust.

760 And this defendant states that on the first day of August, 1887, the said Preston B. Plumb, as such trustee, under and in accordance with the terms and provisions in said mortgage deed of trust in that behalf contained, and on account of the defendants of said Brierfield Coal and Iron Company in the premises, demanded possession of all the property, real and personal, included in or conveyed by said mortgage deed- of trust, or either of them, and that on the 2nd day of August, 1887, the said Preston B. Plumb, as trustee, with the consent of said company, took actual possession of all the property, real and personal, of said company, and has ever since held possession of said property, and so he had possession of this

property as such trustee, under and by virtue of said mortgage deed of trust, when this bill was filed; and this defendant states that the indebtedness mentioned in said bill which the company owes to W. D. & K. Carter, Jr., the Baldwin Locomotive Works, and to laborers, miners, mechanics, and other employees is substantially correct except as hereinafter mentioned.

SECTION 3. That the debt mentioned in the first part of section 3 of this bill for five thousand dollars, in two notes of twenty-five hundred dollars each, on which said John G. Murray became accom-o-dation endorser, was for money obtained from the Commercial Bank of Selma by this defendant, and the money so obtained was used by this defendant in the legitimate transaction of its business.

SECTION 4. This defendant states that a large amount of money has been invested in this property now owned by this defendant, namely, about nine hundred thousand dollars; and this de-
761 fendant believes and so states that the said property now owned by this defendant and covered by the mortgages mentioned in said bill is now intrinsically of the value of more than one million dollars.

SECTION 5. And this defendant states that in addition to the debts mentioned in said bill which are a prior and superior lien on certain tracts of the property of said company to the said mortgage to the complaint there are owing by said company as follows, namely: The Brierfield Coal and Iron Company owes to W. D. & K. Carter, Jr., an additional sum of thirty-nine hundred dollars, and also owes to the State of Alabama the sum of three thousand eight hundred and twenty-five dollars, and also owes to the estate of B. B. Lewis about the sum of seven hundred dollars, and also owes to French Nabors about the sum of twenty-five hundred dollars.

SECTION 6. That this defendant sold the bonds secured by said mortgage, as hereinbefore stated, and received the money, and used and expended said money so received in its legitimate business, knowing that said money was the proceeds of the sale of said bonds, and that the rate for which said bonds were sold was a fair and reasonable price for said bonds.

[SEAL.] And this defendant, having fully answered, prays to be hence discharged with *his* reasonable costs.

BRIERFIELD COAL & IRON COMPANY,
By T. J. PETER, *President.*

Attest: E. T. PETER, *Sec'y.*

Before me, S. R. Sheppard, a justice of the peace in and for the county of Bibb and State of Alabama, this day personally appeared Thomas J. Peter, who, being by me duly sworn, doth state on oath that he is the president of The Brierfield Coal and Iron Company, the defendant named in the foregoing answer, and that the statements made in said answer as upon knowledge he knows the same to be true, and when stated on information and belief he verily believes the same to be true. *De*fiant further makes oath that he is

authorized to file the foregoing answer for sa-d company under its corporate seal.

BRIERFIELD COAL AND IRON COMPANY,
By THOMAS J. PETER, *President.*

Attest: E. T. PETER, *Secretary.*

Sworn to and subscribed before me this 13th day of December, 1887.

S. R. SHEPPARD,
Justice of the Peace.

MARKS & MASSIE,
Sol'rs for the Defendant, Brierfield Coal & Iro- Co.

Filed January 14th, 1888.

J. W. DIMMICK, *Clerk.*

762 *Decree Authorizing Trustee to Issue Certificates, &c.*

In the Circuit Court of the United States, Middle District of Alabama. In Equity.

WILLIAM L. CHAMBERS, Trustee, Complainant,
vs.
BRIERFIELD COAL AND IRON COMPANY, Defendant. } No. 103.

This cause, coming on further to be heard upon the petition of William L. Chambers, trustee, for an order authorizing him to borrow money for the purposes in said petition set forth and to issue certificates of indebtedness therefor, is submitted for decree upon the petition, the motion of complainant that the prayer of the petition be granted, and upon the evidence offerred in support thereof.

And it appearing to the court that all the parties in interest have had due and legal notice of said petition and motion; and it also appearing that there is owing for purchase money of lands the following amounts, viz., to W. D. & K. Carter, Jr., the sum of thirty-nine hundred dollars, and to French Nabors the sum of twenty-five hundred dollars, and to the estate of B. B. Lewis, deceased, seven hundred dollars, which said amounts are first liens on certain lands embraced in the trust deeds and in possession of the trustee in this cause; and it further appearing to the court that the furnace now operated by the trustee is in need of repairs in order to its effective and economical operation, which repairs will cost the sum of forty-six hundred dollars; and it further appearing that a new drill for mining coal is needed at the mines operated by the trustee, which will cost the sum of three hundred dollars; and it further appearing that the operation of the mines, ore banks, quarri-s, and ovens for mining and prepairing the raw material for the manufacture of iron while the repairs are being made on the furnace is necessary to the successful operation thereof, and the cost of these will be ten

thousand dollars; and it further appearing that the rolling
763 mill on the property in possession of the trustee, which is now idle, can be put in operation for the sum of five thousand dollars, and that this will be of benefit to the trust estate:

It is therefore ordered, adjudged, and decreed by the court that the said William L. Chambers, as trustee, be, and he is hereby, authorized to issue twenty-seven certificates of indebtedness, each for the sum of one thousand dollars, payable five years after the date thereof, with interest at the rate of eight per cent. per annum, payable semi-annually on coupons to be attached to said certificates, principal and interest payable at some bank or banking-house in the city of New York; which certificates, when so issued, shall be a first lien on the entire property of the Brierfield Coal & Iron Company embraced and described in the two deeds of trust set forth in the pleadings superior to all other liens on said property except that created in favor — twenty-five thousand five hundred and sixty-seven $\frac{12}{100}$ dollars of trustee's certificates authorized by a former order of this court.

It is further ordered that the clerk of this court certify under the seal of this court upon each of said certificates that the same is issued in accordance with this decree, and keep a record of the certificates so issued. It is further ordered, adjudged, and decreed that the said trustee be, and he is hereby, authorized and empowered to negotiate, hypothecate, or sell said certificates for the purpose hereinbefore specified, but none of said certificates, nor any coupon thereof, shall be sold or hypothecated or in any manner disposed of by said trustee for less than its face value, and when so disposed of by him the purchaser shall not be required to see that the money received therefor is applied to the uses and purposes for which said certificates were issued.

It is further ordered that the said trustee, with the money obtained upon said certificates, shall pay off and discharge the li-ns and purchase the machinery and make the repairs mentioned in this decree.

It is further ordered that said trustee report to this court his acts and doings under this decree.

JOHN BRUCE, *Judge.*

Jan'y 16, '88.

Filed the 16th day of Jan'y, A. D. 1888.

J. W. DIMMICK, *Clerk.*

764 *Decree pro Confesso as to Carrie S. Plumb, Justin S. Morrill, George I. Seney, Calvin S. Brice, Samuel Thomas, M. S. Pomeroy, W. D. Carter, & Kearsley Carter, Jr.*

In the Circuit Court of the United States for the Middle District of Alabama.

WILLIAM L. CHAMBERS, Trustee,
vs.
BRIERFIELD COAL AND IRON COMPANY & Others. } No. 103. In Equity.

At rules, before the clerk of said court and at the office of said clerk, on Monday, the second day of April, A. D. 1888.

This day comes the complainant, by his attorneys & solicitors, Thorington & Smith, and moves the court for a decree *pro confesso* against the defendants, Carrie S. Plumb, Justin S. Morrill, George I. Seney, Calvin S. Brice, Samuel Thomas, M. S. Pomeroy, W. D. Carter, and Kearsley Carter, Jr., and the Ala. Nat'l Bank of Birmingham; and it appearing that subpœnae issued in the above cause on the 26th day of August, 1877, and has been returned and filed, and it appearing therefrom that the said subpoena was duly served on the defendant-, W. D. Carter and Kearsley Carter, on the 2nd of Sept., 1887, and on the def't, The Ala. Nat'l Bank of Birmingham, on the 9th of Aug., 1887; and it further appearing from the certificate of the clerk of this court that publication was duly made in accordance with the order of court requiring notice to the non-resident defendants, Carrie S. Plumb, Justin S. Morrill, George I. Seney, Calvin S. Brice, Samuel Thomas, & M. S. Pomeroy, and no appearance having been entered on the part of the said defendants, W. D. Carter, Kearsley Carter, Carrie S. Plumb, Justin S. Morrill, George I. Seney, Calvin S. Brice, Samuel Thomas, and M. S. Pomeroy, and the Ala. Nat. Bank of Birmingham, or plea, answer, or demurrer filed: Therefore, on motion as aforesaid, it is ordered and decreed that the bill of complaint in this cause be taken as in all things confessed as to the said defendants.

Witness my hand this 2nd day of April, A. D. 1888.

[SEAL.] J. W. DIMMICK,
Clerk U. S. Circuit Court, Mid. Dist. of Alabama.

Filed and entered the 2nd day of April, 1888.

J. W. DIMMICK, *Clerk.*

765 *Replication of Complainant.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

W. L. CHAMBERS, Trustee, Complainant,
vs.
THE BRIERFIELD COAL & IRON CO. *et als.*, Respondents. } No. 103.

The replication of Wm. L. Chambers, trustee, complainant, to the answer of the Brierfield Coal and Iron Company, Thomas J. Peter, John G. Murray, Charles Bates, City National Bank of Selma, J. T. Fitzgerald, C. C. Huckabee, R. L. McCalley, Commercial National Bank of Selma, Esther A. Peter, E. T. Peter, Laura E. Williams, and to all the answers filed herein.

This replicant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient — the law to be answered unto, and that the answers of said defendants are uncertain, untrue, and insufficient to be replied unto by this replicant, without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by his said bill he hath already prayed.

THORINGTON & SMITH,
Compl't's Sol'rs.

April 11, 1888.

J. W. DIMMICK, *Clerk.*

766 *Petition of W. L. Chambers, Trustee, for Modification of Former Order.*

The U. S. Circuit Court, Middle District of Alabama. In Equity.

W. L. CHAMBERS, Trustee,
vs.
THE BRIERFIELD COAL AND IRON COMPANY *et als.* } No. 103.

To the Hon. John Bruce, judge:

The petition of W. L. Chambers, trustee, complainant in above cause, respectfully shows unto your honor:

1st. That heretofore, to wit, on the — day of January, 1888, your honor granted unto your petitioner an order directing him to issue trustee certificates to the amount and for the purposes named in

said order, and that in accordance therewith your petitioner issued and sold said certificates.

2nd. Your petitioner further shows that he compromised the claim of French Nabors, mentioned in said order, by the payment of, viz., sixteen hundred dollars, which left in his hands, viz., about nine hundred dollars of the amount authorized for payment of said Nabors.

3d. Petitioner further shows that in view of the existing dullness in the iron market and the low price of which it sells, and, after consultation with the holders of the majority in value of the bonds and stock of the Brierfield Coal & Iron Co. and with other persons of experience in such matters, he is informed and believes and on such information and belief states that it would be unwise and at present unprofitable to operate the rolling mill on said property.

3d. Petitioner further shows that there has lately come to his knowledge a claim of the State of Alabama for purchase-money of sixteenth section land, amounting, with interest, to about the sum of eleven hundred and fifty dollars, which is long past due and unpaid and which is a lien on the land sold, and the payment of this note was not provided for by the former order of this court,
767 the indebtedness of said company to the State, with interest thereon, amounting to the aggregate sum of about forty-one hundred and fifty dollars instead of the sum of three thousand dollars, as stated in the former orders in this cause, and for which payment was provided thereby.

4th. Petitioner shows that the interest on the certificates issued under the order of this court of date, viz., the 12th August, 1887, viz., $13,567.12, became due and payable on the first day of the present month of April, 1888, and payment of which has been provided for by petitioner on his personal credit, as he had no trust funds which could be applied thereto, which interest amounted to the sum of, viz., $550.00, and that State and county taxes are due and unpaid, and that he has no money of the trust except that arising from the sale of said certificates. The premises considered, petitioner prays for an order of this court directing him to pay the amount due the State of Alabama and said interest and taxes, and that he be directed not to repair or operate said rolling mill as formerly ordered; and, further, that all sums received as the proceeds of the certificates heretofore issued and sold which shall not be required for the purposes specified in said orders be used in the operation and management of furnace and mines and said property generally.

THORINGTON & SMITH,
Sol's for Tr.

Filed April 11th, 1888.

J. W. DIMMICK, *Clerk.*

Notice of this petitioner acknowledged this 4th day of April, 1888.

E. W. PETTUS,
Sol'r for City Nat. B'k of Selma & Others.

THE STATE OF ALABAMA, }
Montgomery County. }

Personally appeared before me, N. B. Holt, notary public in and for said Co. & State, Wm. L. Chambers, who is known to me, who, being duly sworn, deposes and says that the statements in the foregoing petition are true to the best of his knowledge, information, and belief.

W. L. CHAMBERS.

Sworn & subscribed before me this 10th April, 1888.

N. B. HOLT,
Notary Public.

768 *Decree Modifying Former Order, &c.*

In the Circuit Court of the United States for the Middle District of Alabama.

W. L. CHAMBERS, Trustee,
vs.
BRIERFIELD COAL AND IRON COMPANY and Others. } # 103.

This cause came on further to be heard upon the petition of W. L. Chambers, trustee, for a modification of former orders of this court authorizing the issue and sale of trustee's certificates and directing the application of the proceeds thereof; and, it appearing that the parties have had due and legal notice thereof, upon consideration, it is ordered, adjudged, and decreed that the prayer of the petitioner be granted. It is further ordered that the trustee do not repair and operate the rolling mill upon the trust property, and so much of the former order of this court requiring him so to do is hereby modified and rescinded. It is further ordered that the trustee, out of the proceeds of the sale of the said certificates, pay and discharge the debt of the said Brierfield Coal and Iron Company to the State of Alabama for the purchase of lands mentioned in the petition, and also the interest on the trustee's certificates heretofore issued, which was due on the first day of April, 1888, and also taxes on the trust estate.

It is further ordered that the trustee apply any balance of proceeds of sale of said certificates that shall remain after the execution of this and the former orders in this cause to the operation and management and protection of furnace and mines and the trust property in his charge.

JOHN BRUCE, *Judge.*

Ap'l 13, '88.

Filed April 13th, A. D. 1888.

J. W. DIMMICK, *Clerk.*

769 *Petition of W. L. Chambers, Trustee.*

In Cir't C't U. S., Mid. Dist. Ala. In Equity.

CHAMBERS, Trustee,
vs.
BRIERFIELD COAL & IRON CO. } # 103.

To the hon. the judges of said court:

The petition of Wm. L. Chambers, trustee, shows unto your honors:

1st. *There* it is necessary to the successful and economical management and operation of the coal mines committed to his charge by the orders of this court to procure a pump and pipe for draining the lower lift of said mine.

That said lower lift is at present imperfectly drained by means of water cars, which are hoisted to the surface and emptied, and that this means of draining is slow, expensive, and inefficient, so much so that *that* said mines cannot be profitably operated.

That the cost of said pump and pipe will be about the sum of fifteen hundred dollars.

That the railroad on and belonging to the trust estate is in bad condition and in need of new rails; that there is needed of such rails about thirty tons, of weight of fifty-six pounds to the yard, which will cost, delivered at Brierfield, about thirty-eight dollars per ton; in the aggregate, about the sum of eleven hundred & forty dollars; that there is needed for use in the coal mines for tracts upon which to run the tram-cars for coal about twelve tons of 16-lbs. steel rails, which will cost at Brierfield about the sum of four hundred and eighty dollars.

That the buildings at Brierfield and on the trust property have been insured, but the policies therefor have in part expired and the premiums on the balance will soon become due.

That, in the opinioner of petitioner, it will be for the ben-
770 efit of all concerned to keep said property insured. Petitioner cannot state with exactness the premiums necessary to be paid for such insurance, but states on information and belief that the same will not exceed the sum of six hundred dollars.

The premises considered, petitioner prays the instructions of this court, and that he be ordered to purchase said pump and pipe and said rails, and to have renewed said policies of insurance or to procure other policies of like amounts as those which have been upon said property; and as in duty, &c.

W. L. CHAMBERS, *Trustee,*
By THORINGTON & SMITH, *His Sol'rs.*

STATE OF ALABAMA, }
Montgomery County. }

Personally appeared before me, Benj. P. Seals, dep. clerk of the cir. court of the U. S. for the mid. dist. of Alabama, T. J. Peter, who

is known to me, who, being duly sworn, deposes and says that he is informed of the contents of the foregoing petition, and that the statements therein contained are true.

T. J. PETER.

Sworn to and subscribed before me this 3rd day of May, A. D. 1888.

BENJ. P. SEALS,
Dep. Clerk U. S. Cir. C't, Mid. Dist. of Ala.

We accept service of notice of the written petition & consent that it may — heard instanter May 3, '88.

WATTS & SON,
Att'ys for Huckabee & McCalley.
PETTUS & PETTUS,
Sol'rs for Parties whose Answers They Filed.
ROY & PETTUS,
For Com'l Bank.
MARKS & MASSIE,
For Co. & Others.

Filed 3rd day May, 1888.

J. W. DIMMICK, *Clerk.*

771 *Decree on Petition of Wm. L. Chambers, Trustee.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

CHAMBERS, Trustee,
vs.
BRIERFIELD COAL & IRON CO. *et als.* } # 103.

This cause, coming on further to be heard, is submitted on petition of W. L. Chambers, trustee, with affidavits.

It appearing that the parties have had due and legal notice of the hearing thereof, it is considered by the court that the prayer of the petition be granted.

It is therefore ordered that the trustee purchase for the trust estate the pump, pipe, and rails mentioned in the petition for use in said mine and on said railroad.

It is further ordered that the trustee keep the buildings on the trust property insured.

May 3, '88.

JOHN BRUCE, *Judge.*

Filed the 3d day of May, A. D. 1888.

J. W. DIMMICK, *Clerk.*

772 *Trustee's Application for Leave to Borrow Money.*

In the Circ't Court of U. S. for Middle Dist. of Ala. In Equity.

W. L. CHAMBERS, Trustee,
vs.
BRIERFIELD COAL AND IRON COMPANY *et als.* } No. 103.

To the hon. judges of said court:

The petition of Wm. L. Chambers, trustee in the above-entitled cause, showeth unto your honor:

1st. That the sums realized from the sale of receiver's certificates authorized in this cause have been appropriated under orders of this court for the purposes named in said orders, and that there is not in the hands of the trustee any sum of money for the operation of the furnace and mines in his charge that is not already appropriated.

2nd. That it is necessary to the successful operation of the said furnace and mines to make a temporary loan of, viz, ten thousand dollars to relieve the present needs of said works.

3rd. That the furnace in his charge is producing about one thousand tons of iron per month and the mines are producing in excess of the coal needed for the furnace about five hundred tons per month.

4th. That the iron produced is sold in the usual way on a credit of from two (2) to four months, and that the cash returns from such sales are not sufficient at present to pay the expenses of operation; that since the recent decline in the price of iron the commission merchants will advance only seven dollars per ton on iron ship-ed them instead of ten dollars as heretofore.

That the full returns from sales of iron already made will not be received for some months yet.

5th. That petitioner is advised and believes, and so states,
773 that the operation of the furnace and mines and stores in his hands show a profit of about the sum of one thousand dollars per month, but that for the reasons above stated such profit is not available in cash.

6th. Petitioner is informed and believes, and on such information and belief states, that he can borrow said sum of ten thousand dollars at the rate of eight per cent. per annum for the period of six months, at the expiration of which time said sum can be repaid out of the earnings of the property without interferring with its operation.

Whereupon petitioner prays that he be ordered and authorized to borrow said sum of ten thousand dollars for a period of six months, and to execute therefor his promis-ory notes for said sum, payable six months after date with interest thereon at the rate of eight per cent. per annum, and that the trust property be charged with the payment thereof, and as in duty, &c.

W. L. CHAMBERS, *Trustee,*
By THORINGTON & SMITH,
His Solicitors.

Personally appeared Thos. J. Peter who makes oath that the statements in the foregoing petition are true.

THOMAS J. PETER.

Sworn and subscribed before me this 15th — May, 1888.

JOHN BRUCE, *Judge.*

Filed May 15, '88.

J. W. DIMMICK, *Clerk.*

774 *Order Authorizing Trustee to Borrow* $10,000.00.

In the United States Circuit Court for Middle District of Alabama.

, CHAMBER, Trustee,
vs.
BRIERFIELD COAL & IRON CO.

This cause coming on further to be heard upon the application of Wm. L. Chambers, trustee, for an order authorizing him to borrow ten thousand dollars for the operation of the trust property, and it appearing from the evidence of Thomas J. Peter that it is necessary and for the benefit of the trust property that said sum be borrowed—

It is therefore ordered, adjudged, and decreed that the said W. L. Chambers, trustee, be, and he is hereby, authorized and ordered to borrow said sum of ten thousand dollars and to execute therefor his promis-ory notes, payable six months after date thereof with interest at the rate of eight per cent. per annum, and that the trust property be charged with the payment thereof.

May 15th, '88.

JOHN BRUCE, *Judge.*

Filed May 15, '88.

J. W. DIMMICK, *Clerk.*

775 *Answer of Geo. I. Seney, Samuel Thomas, & Calvin S. Brice.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

PRESTON B. PLUMB, as Trustee, Complainant,
vs.
THE BRIERFIELD COAL AND IRON COMPANY *et als.*, Defendants. } No. 103.

The separate and joint answer of George I. Seney, Samuel Thomas, and Calvin S. Brice, defendants to the bill of complaint exhibited in the above-entitled cause.

For answer to so much of said bill as these defendants are advised it is material for them to answer, they say, 1 & 2: In answer to sections one and two of the bill, they say that the said company was

organized and duly incoporated at the time and for the purposes therein stated, and that they became subscribers to the capital stock of said company as stated in said section—said Seney holding 400 shares of the stock, said Thomas 400, and said Brice 30; that on the stock so held by them they have paid as follows, said Seney on his 400 shares, $22,800.00; said Thomas on his 400 shares, $23,745.00, and said Brice on his 30 shares, $810.00.

For further answer to said section one these defendants say that the bonds and deed of trust were duly issued and executed as is stated in this section of the bill, and that these defendants and all of the stockholders of said company had knowledge of their issuance and execution and duly consented thereto.

The defendants became the purchasers and holders of the following numbers of said bonds, to wit, said Seney forty thereof,
776 of $1,000.00 each; said Thomas forty thereof, of $1,000.00 each, and said Brice three thereof $1,000.00 each, defendants purchased said bonds of said company, and paid therefor at the rate of ninety cents in the dollar, which was the full value thereof, and more than said bonds could have been sold for to any one else except the stockholders of said company, who were interested in the development and improvement of the property. The other averments of this section of said bill these defendants have no personal knowledge thereof, and if material to their defense or interest in this case they deny them, and require proof thereof. Defendants deny that any such equitable right and lien exist as alleged in these sections of said bill to be claimed and asserted by the complaint therein, and the said Thomas J. Peter on *on* account of liabilities of said company paid by them and for which they may be security.

3. In answer to section three these defendants say that they have no personal knowledge of the averments thereof, and if material to their interests and defense in this case they deny the same and require proof thereof. They deny any such equitable right or lien by subrogation or otherwise as is alleged to be asserted by said Thomas J. Peter and said Murray on account of the payment by them of the said liability of said company.

4. In answer to section four these defendants say they have no personal knowledge of the averments of fact therein contained, and if material to their interest or defense in this case they deny them and require proof thereof.

5. In answer to section five these defendants say they admit they have never made any demands as holders of bonds secured
777 by said deed of trust of said complainant for a strict foreclosure of said deed of trust. As to the other matters and things in this section of the bill alleged these defendants have no personal knowledge thereof, and if material to their interest or defense in case deny the same and require proof thereof.

For further answer to said bill these defendants say that they are not liable for any unpaid balance on the stock of said company held by them, and that if such liability exist they claim and assert the right to pay and discharge the same, with so much of the said

bonded indebtedness of said company due to them as may be necessary therefor.

And these defendants, having fully answered said bill, pray to be hence dismissed with their costs in this behalf expended.

HUMES, WALKER, SHEFFEY & GORDON,
Sol's for Def'ts.

Consent is hereby given that the decree *pro confesso* in this cause against Samuel Thomas, George I. Seney, & Calvin S. Brice be set aside upon the filing of the foregoing answer.

This done this the 9th day of July, 1888.

THORINGTON & SMITH,
For Compl'ts.

Filed in office this 9th day of July, 1888.
J. W. DIMMICK, *Clerk.*

778 *Decree of Reference.*

In the Circuit Court of the United States for the Middle District of Alabama.

W. L. CHAMBERS, as Trustee, &c., *vs.* THE BRIERFIELD COAL AND IRON CO. *et als.* } In Equity. 103. May Term, 1888.

This cause came on to be heard on the 13th day of July, 1888, a day of said term, and was submitted for a decree by the parties on the original and amended bills and exhibits, the answers of defendants, and decrees *pro confesso* heretofore entered against defendants, who have failed to answer. And, upon consideration thereof, it is ordered, adjudged, and decreed by the court that complainant is entitled to the aid and direction of this court in the administration of the trust created by said deeds of trust from the Brierfield Coal and Iron Company to P. B. Plumb, dated, respectively, the 1st day of September, 1882, and the 29th day of July, 1887, and to have the accounts hereinafter ordered taken and stated in this court; but as to all other questions embraced in this cause the court now here expressly reserves the same for future consideration. It is further ordered that it be and is hereby referred to Joseph W. Dimmick, as special master (he for reasons satisfactory to the court appearing to be the fitter person to act in that behalf), to ascertain and report with all convenient speed.

779 First. What was the total amount of the capital stock of said Brierfield Coal and Iron Company at the time said company was organized.

Second. How much of said capital stock was subscribed for and by whom and for whom, and how much by each subscriber severally, and who are the owners thereof and of what amounts severally.

Third. How much has been paid by each subscriber or owner on such stock, and when such payments were made, and what amount

is still unpaid on the shares of each subscriber or owner, and what "calls" have been made for such payments and when.

Fourth. What amount of bonds and coupons were issued by said company and are secured by said deeds of trust, the number of each bond issued and to whom they were issued, and what amounts were paid therefor by the several persons to whom they were issued, and how many of said bonds and coupons were issued to each person, and what interest, if any, has been paid thereon to the holders of said bonds and to which of them, and the names of the persons who now hold said bonds and coupons and the amount held by each, and the amount due to the several holders of such bonds and coupons on account thereof, and the amount of past due coupons and interest thereon held by each person up to the time of taking said account, and which of said bonds by number are registered pursuant to the terms of said deeds of trust, and in whose name the same are registered and when registered.

Fifth. The master will further ascertain and report whether
780 or not any of the parties to this suit have endorsed any paper as security for the Brierfield Coal and Iron Company or otherwise become surety therefor; and, if so, whether or not such party or parties placed or pledged any of the bonds and coupons secured by said deeds of trust with the owners of such debts as collateral security therefor; and, if so, what agreement or agreements were made in respect thereto, and by whom and to whom such pledge or endorsement was made, the amounts and nature of the debts so secured by such collateral or endorsement and how the money represented by said debts was applied; and the amount and numbers of the bonds and coupons so pledged in each case, and whether any of said debts have been paid and how and by whom.

But all questions as to the equities, rights, and priorities of all the parties in respect to such endorsements and pledges or deposit of collateral are expressly reserved for the future consideration of the court.

Sixth. The master will further ascertain and report whether or not at the time of the filing of the bill in this cause there were any liens on the property or any and what part thereof conveyed by said deeds of trust that were prior and superior to the lien of said bonds; and, if so, in whose favor such prior liens existed and their nature, and the amounts severally of the debts having such priority and to whom they now belong, respectively, and whether or not they have been paid, and, if so, how and when paid and by whom, and if not paid what amounts are now due and to whom due, respectively.

Seventh. The master will further ascertain and report whether or not the property described in the amended and supplemental bill filed in this cause on the 26th day of August, 1887, as having been bought by the Brierfield Coal and Iron Company from W. D. Carter and K. Carter, Jr., was owned by said Carters jointly or as partners at the time of such purchase and whether the notes and mortgages given to secure the purchase-money for said property were owned by said Carters jointly or as partners, and what, if anything,

was owing by said William D. Carter to the said Brierfield Coal and Iron Company at the time said notes and mortgage were made or since and on what account and how much is now due on such indebtedness, and whether or not *said* the said W. D. Carter owns any property that is subject to execution at law.

Eighth. The master will further ascertain and report the facts in regard to the sales of lots belonging to the Brierfield Coal and Iron Company set forth in the answer of the defendant, Jno. G. Murray, as having been made by said company and said Preston B. Plumb, as trustee, to the purchasers named in said answer, and what were the terms and conditions on which said company and said trustee agreed to convey to the Hematite Club, mentioned in said
781 answer, the property mentioned in the 8th section thereof, and whether such terms and conditions have been complied with and how.

Ninth. The master will further ascertain and report what portion of the property conveyed by said deeds of trust by said company to said Plumb, as trustee, remain in the possession and control of the present trustee subject to the claims of the bondholders in this suit.

Tenth. The master will further ascertain and report the facts concerning the organization of the defendant corporation, the Brierfield Coal and Iron Company.

Eleventh. The master will further ascertain and report the facts concerning the execution of the deeds of trust mentioned in the bill to Preston B. Plumb, trustee, by the Brierfield Coal and Iron Company.

Twelfth. The master will further ascertain and report the facts in reference to the alleged surrender by Preston B. Plumb to said Brierfield Coal and Iron Company of past due coupons on said bonds as a payment on the subscription for stock standing in the name of Carrie S. Plumb, and in reference to the redelivery of said coupons to said Plumb.

Thirteenth. The master will further take and state the accounts of said Preston B. Plumb and William L. Chambers, severally, as trustees.

Fourteenth. The master will take proof and report the facts on any other matter or matters stated in the pleadings in this cause if requested so to do by any of the parties to this cause.

All questions as to the equities of the parties not herein decreed on are reserved for the future consideration of the court.

It is ordered, adjudged, and decreed that the said Dimmick, as such master, give notice to the holders of the bonds and coupons of said Brierfield Coal and Iron Company by publication for thirty days in the Montgomery Advertiser, a newspaper published in the city of Montgomery, Alabama, requiring them to make proof of and file such bonds and coupons with such special master within sixty days from such publication.

It is further ordered that the holders of such bonds and coupons file and make proof thereof before the said special master as afore-

said, and all bonds and coupons not so filed and proved shall be barred.

July 13, 1888.

JOHN BRUCE, *Judge.*

Filed the 13th day of July, A. D. 1888.

J. W. DIMMICK, *Clerk.*

782 *Answer of W. D. Carter & K. Carter, Jr.*

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

PRESTON B. PLUMB, Trustee,
v.
THE BRIERFIELD COAL AND IRON COMPANY *et al.*

Come the defendants, W. D. Carter and Kearsley Carter, Jr., and without in any manner waiving but expressly reserving any objection or exception to the manifold errors and inaccuracies therein contained, for answer to the original and amended bill of complaint in the above-entitled cause, or so much thereof as they are advised that it is necessary for them to answer, jointly and severally answering, say:

First. They say that they neither admit nor deny the several allegations therein contained, except as are hereinafter admitted or particularly denied; and these defendants call for strict proof thereof.

Second. Further answering, these defendants aver that the Brierfield Coal and Iron Company owed these defendants at the time of the filing of said bill in the neighborhood of six thousand dollars ($6,000.00), including a large amount for past due and unpaid interest on the purchase-money account of property sold by them as partners to the Brierfield Coal and Iron Company, the particular amount of which indebtedness, without an accurate calculation, these defendants will not here undertake to state.

783 Third. And touching the complainant's allegation in said amended bill that W. D. Carter was *was* justly indebted to the said defendants, The Brierfield Coal and Iron Company, in the sum of about $2,400.00, or other large sum, for and on account of advances alleged to have been made to him on his individual responsibility by said company, these defendants jointly and severally and emphatically deny the same as therein particularly stated and averred. The particulars of said alleged indebtedness and the direct connection of the said complainant, Preston B. Plumb, therewith and his personal liability therefor, defendants are advised that it is not necessary here to be set up or disclosed. These defendants, for further answer, say that for several years, six or seven years, prior to the time of the sale of the said Bibb Furnace property (and at the time of the sale thereof) to the said Brierfield Coal and Iron Company, or rather to T. J. Peter for said company, these defendants

were living at Bibb Furnace, in Bibb county, Alabama, and were both respectively engaged in the business of making pig-iron, and also in a general mercantile business, carrying a general line of goods, wares, and merchandise, including groceries such as are usually kept in a country store, and a commissary store in connection with the manufacturing of pig-iron for market, and were engaged in the said entire business, under the partnership name
784 and style of Bibb Furnace Company, as joint and equal partners.

They aver that everything was owned and held by them equally, share and share alike, as partners, and that they were equal partners in the manufacturing business, in the store property, in the goods, wares, and merchandise therein, in the commissary store at Bibb Furnace, and in all the property, lands, improvements, and appurtenances of every kind and description belonging to the business known as the Bibb Furnace Company. They aver that the property and lands sold by W. D. & K. Carter, Jr., to said Brierfield Coal and Iron Company belonged to these defendants equally and jointly as partners, and were held and treated in all respects as partnership property and effects. They further aver that the debt due to W. D. Carter & K. Carter, Jr., from said Brierfield Coal and Iron Company was a partnership assett, and that the notes evidencing said indebtedness were made payable to W. D. Carter and K. Carter, Jr. They aver that the said Bibb Furnace Company was not a corporation, but was merely the name and style adopted, used, and employed by these defendants in carrying on said partnership business jointly and severally and equally by them as partners as aforesaid.

These defendants, further answering, say that they deny that W. D. Carter was or is insolvent. They aver that the partnership of W. D. Carter and K. Carter, Jr., doing business as afore-
785 said under the name and style of the Bibb Furnace Company, contracted partnership debts—many of which are paid, but some of which remain yet unpaid; and they also aver that the matters of account between these said defendants as partners as aforesaid have never been fully settled or equalized, and that neither of said partners has any such separable interest in the matter of the indebtedness due to said partnership by said Brierfield Coal and Iron Company or in any article or piece or parcel of the property, real or personal, owned by said partnership as could at law or in equity become the subject of set-off.

In short, these defendants are advised and believe and therefore aver that as against the debt due by said company to said partnership, composed of said two members, the said Brierfield Coal and Iron Company will not be allowed, either at law or in equity, to set off an alleged indebtedness due to it from one member of the said partnership and not by the partnership itself; and that the alleged debt of W. D. Carter is not the subject of a legal or equitable set-off against the indebtedness due by the said company to these defendants as partners as aforesaid; and that there is no mutuality or connection between the two claims or demands.

These defendants, further answering, aver that they had a partial settlement of the partnership business before the original bill
786 in this case was filed, and that at the time of said partial settlement W. D. Carter owed Kearsley Carter, Jr., something over six thousand dollars ($6,000.00), at which time W. D. Carter transferred and assigned to his brother, Kearsley Carter, Jr., all his interest, right, and claim in or to the said notes and in the balance due under contract from said coal and iron company.

They aver that there was never any division of the notes between the partners except that at the time of said partial settlement the said notes then remaining unpaid were turned over and delivered to said Kearsley Carter, Jr., and he has retained them from said W. D. Carter ever since.

They aver that the said W. D. Carter did not have or claim to have any interest in said notes or in any of the partnership effects after said transfer was made.

They aver that at the time of the partial settlement above referred to the amount due by W. D. Carter to Kearsley Carter, Jr., was not accurately stated, and that the said W. D. Carter will owe the said Kearsley Carter, Jr., considerably more than the amount hereinabove named on a full accounting between the partners, and that because of this fact the term "partial settlement" has been employed herein for the sake of distinction and convenience, and in order to negative the idea that there has been any full or final settlement between defendants as partners as aforesaid.

These defendants, further answering, say that they are
787 brothers and that the money invested in the property, lands, appurtenances, goods, and other effects belonging to the said business, known and called the Bibb Furnace Company, was a joint gift from their grandfather, George L. Douglass, of Louisville, Ky., to them.

They further aver that both of these defendants lived at Bibb Furnace and were actively engaged in carrying on said business as partners as aforesaid; that during a large period of those years the said W. D. Carter was a married man with a family to support, & that Kearsley Carter, Jr., was a single man, with considerably less expense to live than in the case of the said W. D. Carter, and that as a result he (W. D. Carter) withdrew from the partnership business an amount of money greatly in excess of that used by the said Kearsley Carter, Jr., for expenses incident to the support and maintenance of his family as aforesaid.

Fourth. These defendants, further answering, say that the $1,500.00 held back of the purchase-money now due on the contract of sale to the Brierfield Coal & Land Company was on account of forty acres of land, to which some other land company now assert a claim. These defendants aver that said forty acres of land have been in the possession and control of these defendants & those under whom they hold for nearly thirty years, & that they & those
788 under whom they hold have been exercising acts of ownership over them and claiming the same openly, notoriously, & adversely during all this long while, and without any knowledge

of any other party claiming any right, title, claim, or interest therein until shortly before the filing of the bill in this case.

And now, having fully answered, these defendants ask to be hence discharged with their reasonable costs; and, as in duty bound, they will pray, &c.

RICE & WILEY,
Solicitors for W. D. Carter & K. Carter, Jr.

In the Circuit Court of the United States for the Middle District of Alabama.

Before me, B. P. Seals, deputy clerk of the United States circuit court for the middle dist. of Alabama, personally appeared K. Carter, Jr., known to me to be one of the defendants in the above-entitled cause, who, being duly sworn, deposes and says that the allegations and averments contained in the foregoing answer when stated of his own knowledge are true, & when stated upon information & belief he verily believes the same to be true.

K. CARTER, JR.

Sworn and subscribed this 21st day of Jan'y, 1889.
BENJ. P. SEALS,
Dep. Clerk U. S. Cir. C't, Mid. Dist. of Ala.

Filed the 21st day of Jan'y, A. D. 1889.
J. W. DIMMICK, *Clerk.*

789 *Petition of W. L. Chambers, Trustee, for Instructions.*

In U. S. Circuit C't, Mid. Dist. of Ala. In Equity.

W. L. CHAMBERS, Trustee,
vs.
BRIERFIELD C. & I. Co. *et als.* } 103.

To the Hon. Jno. Bruce, judge of said court:

The petition of W. L. Chambers, trustee, respectfully shows unto your honor that, in accordance with the orders and decrees of this court heretofore in this cause made and rendered, he has been conducting the business of said Brierfield Coal and Iron Co. in the manufacture of pig-iron and coke and the mining of coal on the trust property; that he has had from the products of the works and funds provided by the court sufficient moneys to conduct such operations so far, but that owing to the sudden and unlooked for decline in the price of pig-iron since January 1st, 1889, which decline amounted to nearly or quite two dollars per ton, the said operations were conducted at a loss to the trust estate of about two thousand dollars during the month of January, 1889, alone; that, so far as petitioner is advised and can foresee, there is no prospect of such an advance in pig-iron in the immediate future as will justify peti-

tioner in conducting farther the manufacture of pig-iron, and that at present there is little remunerative market for coke and coal which can be reached by petitioner in successful competition with collieries located nearer to furnaces. Petitioner shows that on the property in his charge and which he
790 is now operating is a coal mine, which if shut up will soon fill with water and be largely damaged, and petitioner is informed and believes and thereupon charges that the probable damage that would result from such flooding and closing up would be about ten thousand dollars, besides the delay in putting said mine in condition for successful operation when it shall again be deemed advisable to work it. Petitioner shows that said mine can be kept in good condition by the employment of about eight men at an expenditure of about three hundred dollars per month, and that that amount will probably be sufficient to have some necessary work done in said mines; that the doing of said work will not add to the expense of taking care of said mine, but will preserve and add to the value of said mine.

That the probable expense of taking care of the property of the trust estate while the works are idle will be about the sum of two hundred dollars per month. Petitioner shows that he has in hand funds sufficient to pay off the expenses of operation during the month of January, 1889, and that there will be due him from sales of products of the works within the next four months about the sum of five thousand dollars; that in case the works are closed and its operations discontinued there will be due to the operatives and for expenses of operation about the sum of five thousand dollars which should be paid, and which petitioner is without funds to pay.

791 Petitioner files herewith the affidavit of Thos. J. Peter, manager of said mines and property, in support of this petition.

Petitioner prays the instructions of the court as to whether he shall continue the manufacture of iron and coke and mining of coal, and whether he shall care for the said coal mine in the manner hereinabove set forth, and for full and complete instructions and directions in the premises. He further prays in case he is ordered to discontinue the manufacture of iron and coke and the mining of coal that he be authorized to borrow for the purpose of paying off operatives and operating expenses the sum of five thousand dollars to be repaid in four months, and that he be authorized to borrow such other sum as shall be necessary to care for said coal mine and the property in his hands of the trust estate not to exceed the sum of five hundred dollars per month.

And for such other orders and instructions as to the court may seem meet; and, as in duty, &c.

W. L. CHAMBERS, *Trustee*,
By THORINGTON & SMITH,
His Solicitors.

STATE OF ALABAMA,
Montgomery County.

Before me, J. W. Dimmick, clerk of the circuit court of the United States for the middle district of Alabama, this day personally
792 appeared T. J. Peter, who, being duly sworn, doth state on oath that he is manager and agent, under the trustee, of the property of the Brierfield Coal and Iron Company, and that he has personal knowledge of the facts set forth in the foregoing petition, and that the same are true and correct as therein stated.

T. J. PETER.

Sworn to & subscribed before me this 14th day of February, 1889.

BENJ. P. SEALS,
Dep. Clerk U. S. Cir. C't, Mid. Dist. of Ala.

I accept service of notice of the within petition and consent that the same be heard at once.

Feb'y 13, '89.

E. W. PETTUS,
Solicitor for Those for Whom I Have Filed Answers.
HUMES, WALKER, SHEFFEY & GORDON,
Sol's for Thomas, Seney, & Brice.
MARKS & MASSIE,
Sol'rs for Brierfield Coal & Iron Company, Thomas J. Peter, & Jno. G. Murray.

Filed the 14th day of February, A. D. 1889.

J. W. DIMMICK, *Clerk.*

793 *Order on Petition of W. L. Chambers, Trustee, for Instructions, &c.*

In Circ't Court of U. S. for the Middle District of Ala. In Equity.

CHAMBERS, Trustee,
vs.
BRIERFIELD COAL & IRON CO. *et als.* } 103.

This cause coming on further to be heard is submitted on the petition of W. L. Chambers, as trustee, for instructions and evidence in support thereof; and it appearing to the court that due notice of said petition has been given to all the parties and no objections having been made, and upon consideration thereof, the court is of opinion that it is to the interest of the trust estate that the operations of the works by the trustee in the manufacture of iron and coke and mining of coal be discontinued. It is therefore ordered, adjudged, and decreed that W. L. Chambers, trustee, discontinue the manufacture of iron and coke and the mining of coal on the trust estate in his hands, and that he pay off all claims that have accrued for the wages of operatives and expenses of operation out of any of the trust funds in his hands. It is further ordered that said

trustee may borrow such additional sum as may be necessary for that purpose, not exceeding five thousand dollars, to be repaid in four months from the date of the loan, and to execute therefor his promissory note or notes.

It is further ordered that said trustee employ a sufficient
794 number of men to preserve and care for the property of the trust estate, and for their compensation and the payment of expenses incident to such care and preservation the trustee is authorized and ordered to borrow such sum each month as shall be necessary therefor, not to exceed five hundred dollars per month, and to execute therefor his promissory notes.

Dated Feb'y 14, 1889.

JOHN BRUCE, *Judge.*

Filed the 14th day of February, 1889.

J. W. DIMMICK, *Clerk.*

795 *Depositions of Sam'l Thomas, Geo. I. Seney, and Calvin S. Brice.*

In the Circuit Court of the United States for the Middle District of Alabama, at Montgomery.

W. L. CHAMBERS, Trustee, Complainant,
vs.
THE BRIERFIELD COAL & IRON COMPANY, SAMUEL Thomas, George I. Seney, Calvin S. Brice, *et als.*, Defendants. } In Equity.

Interrogatories propounded by defendants, Samuel Thomas, George I. Seney, and Calvin S. Brice, who reside in the city of New York, State of New York, to themselves, said Sam'l Thomas, George I. Seney, and Calvin S. Brice, the answers to which, when properly taken, will be offered in evidence before the master on the reference in said cause and on the trial of the same.

Interrogatory 1. Please file as your answer to this interrogatory a copy of the certificate issued to you or representing your stock in the Brierfield Coal and Iron Company.

Int. 2. State whether or not in reference to the terms of your subscription to the stock of said Brierfield Coal and Iron Company you have made or entered into any agreement with said company other than the original subscription agreement for the stock and bonds of said company, signed "George I. Seneyand associates;" and, if so, what was such additional agreement or contract?

796 Int. 3. State whether or not you have held and claimed your stock in said company as fully paid up.

Int. 4. State whether or not you have recognized or admitted any legal liability on your part to respond to assessments made upon said stock after the certificates therefor as fully paid up were issued to you.

Int'y 5. State under what circumstances and why you have paid

money into the company in addition to the amounts you contracted to pay by the original subscription agreement in reference to the bonds and stock of said company.

Int'y 6. State whether or not said company, before the trustee took charge of the property thereof, asserted or set up any legal claim or demand against you for any alleged balance due upon the stock held or owned by you, and whether or not the payments made by you in response to calls were in recognition of any legal liability on your part to answer said calls.

Int'y 7. State why you made payments in response to calls made upon your stock after certificates therefor had been issued as fully paid up.

Int'y 8. State any other matter you may know in regard to the subscription for said stock, the certificates issued therefor, and the payments made upon calls after the issuance of the certificates that will be pertinent to the issues in this cause.

797 HUMES, WALKER, SHEFFEY & GORDON,
Att'ys for Def'ts, Thomas, Seney, & Brice.

Said defendants nominate W. H. Clarkson, whose place of business is 115 Broadway, New York, N. Y., as a suitable person to act as commissioner in taking the deposition- of the above-named witnesses in answer to said interrogatories.

HUMES, WALKER, SHEFFEY & GORDON,
Att'ys for Def'ts.

Filed the 20th day of Feb., 1889.

J. W. DIMMICK, *Clerk.*

Commission to Take Deposition-.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Middle District of Alabama.

To W. H. Clarkson, Esq., 115 Broadway, New York, N. Y.:

Know ye that we, having full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize you, at such time and place as you may appoint, to call before you and examine Samuel Thomas, George I. Seney, and Calvin S. Brice, who reside in the city of New York, as witnesses in behalf of defendants in a case pending in the circuit court of the United States for the middle district of Alabama, at Montgomery, wherein W. L. Chambers, trustee, is complainant and The Brierfield Coal and Iron Company *et als.*, defendants, on oath, to
798 be by you administered, upon interrogatories annexed to this commission, to take and certify the deposition- of the witnesses, and return the same to our said circuit court with all convenient speed under your hand and seal.

Witness Hon. Melville W. Fuller, Chief Justice of the Supreme

Court of the United States, this 21st day of February, A. D. one thousand eight hundred and eighty-nine.

[L. S.] J. W. DIMMICK,
Clerk U. S. Circuit Court, Mid. Dist. of Ala.

In the Circuit Court of the United States for the Middle District of Alabama, at Montgomery.

W. L. CHAMBERS, Trustee, Complainant,
vs.
THE BRIERFIELD COAL AND IRON COMPANY, SAMUEL THOMAS, GEORGE I. SENEY, CALVIN S. BRICE, *et als.*, Defendants.

Depositions of Samuel Thomas, George I. Seney, and Calvin S. Brice, witnesses sworn and examined under and by virtue of a commission issued out of the circuit court of the United States for the middle district of Alabama in a certain cause therein depending between W. L. Chambers, trustee, complainant, and The Brierfield Coal and Iron Company, Samuel Thomas, George I. Seney, Calvin S. Brice, *et als.*, defendants, and hereto annexed.

799 The said witness, SAMUEL THOMAS, of the city, county, and State of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth doth depose and say as follows:

To the 1st interrogatory he saith: I file a true copy of the said certificate and annex it to this my deposition; it is marked Exhibit A for identification.

To the 2nd interrogatory he saith: There was no agreement whatever made by me with the Brierfield Coal and Iron Company.

To the 3d interrogatory he saith: I held and understood my stock to be fully paid up stock.

To the 4th interrogatory he saith: I never recognized or admitted any legal liability on my part to respond to assessments upon my stock, as I held it as fully paid up stock.

To the 5th interrogatory he saith: I understood that the company was in need of money to pay the floating indebtedness, and that the security-holders had agreed to advance such money, and I contributed my share.

To the 6th interrogatory he saith: The company never, to my knowledge, made any claim or demand upon me for any alleged balance due on my stock, and I never made any payment in response to any such demand.

To the 7th interrogatory he saith: I have explained this in my answer to the 5th interrogatory.

To the 8th interrogatory he saith: I do not know anything farther.

(S'g'd) SAMUEL THOMAS.

800 The said witness, GEORGE I. SENEY, of the city of New York, in the county and State of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the 1st int'y he saith: I file a true copy of one of the certificates issued to me representing some of my stock in the Brierfield Coal and Iron Company. My other certificates are the same excepting the numbers of the certificates and the number of shares. The said copy is annexed to this my deposition and marked Exhibit "B."

To the 2nd int'y he saith: To the best of my recollection I made no agreement with the company.

To the 3rd int'y he saith: I held and claimed my stock as fully paid up and non-assessable.

To the 4th int'y he saith: I never at any time after the issue of the stock recognized or admitted any legal liability on my part to respond to any assessments upon it.

To the 5th int'y he saith: As a stock and bond holder of the company, and at the request of Mr. Peter, the president, I voluntarily advanced money from time to time to relieve its necessities.

To the 6th int'y he saith: The company never made any claim or demand, legal or otherwise, for any alleged balance due upon my stock, and I never made any payments in response to any such demands.

To the 7th int'y he saith: I do not remember making any
801 payments in response to calls made upon my stock.

To the 8th interrogatory he saith: I have stated all that I now remember in this matter.

(S'g'd) GEO. I. SENEY.

The said witness, CALVIN S. BRICE, of the city of New York, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the 1st int'y he saith: I file a copy of the certificate of stock as requested. It is hereto annexed, marked Exhibit "C."

To the 2nd interrogatory he saith: I made no agreement with the company.

To the 3rd interrogatory he saith: I held and claimed my stock in said company as fully paid up stock.

To the 4th int'y he saith: I have not recognized or admitted any legal liability upon my stock to respond to any assessments on my stock, the certificates therefor having been issued to me as fully paid up.

To the 5th int'y he saith: Under a representation that all the stockholders were contributing *pro rata* upon their holdings to relieve the company and satisfy its floating indebtedness, without any further inquiry I agreed to go along with the other holders, and did so.

To the 6th int'y he saith: Said company has not at any time, so

far as I know, set up any legal claim or demand upon me for
802 any alleged balance on stock held or owned by me, and payments were not made by me in response to calls as unpaid.

To the 7th int'y he saith: I have answered this fully in my answer to the 5th interrogatory.

To the 8th int'y he saith: I do not understand that I was at any time to subscribe to the capital stock of said company, but that I bought a certain block of stock and bonds from Mr. Peter, to whom I understood that the stock and bonds had been issued as full paid in consideration of coal lands and other properties transferred by him, or by others for him, to the company, and I therefore regarded the stock as fully paid and not subject to assessments, and any contributions made me were voluntary and were outside of any legal liability.

(S'g'd) CALVIN S. BRICE.

STATE OF NEW YORK, }
City & County of New York, } *ss:*

I, William H. Clarkson, the commissioner named in the annexed commission, do hereby certify that I caused to come before me at the office of the East Tennessee, Virginia and Georgia Railway Company, No. 11 Wall street, in the said city of New York, the above-named witnesses, Samuel Thomas, George I. Seney, and Calvin S. Brice; that they were each and severally duly sworn and examined; that their and each of their evidence was taken
803 down as near as may be in their own language under oath and was read over to them respectively and separately and by them severally subscribed in my presence, and that the identity of each of said witnesses is known to me as the same persons named in the interrogatories and the commission annexed, and that I am not of counsel in the cause or of kin to any of the parties to the cause or in any manner interested in the result thereof; that the evidence of the witness Calvin S. Brice was taken down and subscribed by him in my presence on the 11th day of March, 1889, at the place in this certificate aforesaid; that the evidence of the witness Samuel Thomas was taken down and subscribed by him at the same place on the 25th day of March, 1889; that the evidence of the witness George I. Seney was taken down and subscribed by him, at the same place, on the 29th day of March, 1889, and that I have personal knowledge of the said witnesses. Said depositions were reduced to writing by me.

In witness whereof I have hereunto set my hand and affixed my official seal this 29th day of March, A. D. 1889.

[L. S.] WILLIAM H. CLARKSON,
Commissioner, Commissioner for Alabama in New York.

Commissioner's fees for taking and certifying the foregoing deposition, $15.00, paid by defendants Thomas, Seney, & Brice.

WILLIAM H. CLARKSON,
Commissioner.

804 EXHIBIT A.

No. 9. 100 shares.

The Brierfield Coal & Iron Company of Alabama.

Capital, $750,000. Shares, $100 each.

This is to certify that A. O. Beebe is the owner of one hundred full-paid shares of one hundred dollars each in the capital stock of the Brierfield Coal and Iron Company of Ala., transferable only on the books of the corporation, in person or by attorney, in accordance with the by-laws of said corporation and on the surrender of this certificate.

In witness whereof the seal of the corporation and the signatures of the president and secretary are hereunto affixed.

Brierfield, Ala., Nov. 13, 1882.

[Seal The Brierfield Coal & Iron Company of Alabama.]

(Signed) T. J. PETER, *President.*

(S'g'd) JOHN G. MURRAY, *Secretary.*

Certificate endorsed by A. O. Beebe. Two similar certificates, numbered respectively 27 and 37, number 27 being for 70 shares, dated August 22, 1883, and number 37 being for 230 shares, dated January 12, 1885, both in name of A. O. Beebe and endorsed by him.

805 EXHIBIT B.

No. 11. 100 shares.

The Brierfield Coal & Iron Company of Alabama.

Capital, $750,000. Shares, $100 each.

This is to certify that A. O. Beebe is the owner of one hundred full-paid shares of one hundred dollars each in the capital stock of the Brierfield Coal and Iron Company of Ala., transferable only on the books of the corporation, in person or by attorney, in accordance with the by-laws of said corporation and on the surrender of this certificate.

In witness whereof the seal of the corporation and the signatures of the president and secretary are hereunto affixed.

Brierfield, Ala., Nov. 13, 1882.

[Seal The Brierfield Coal & Iron Company of Alabama.]

(S'g'd) T. J. PETER, *President.*

(S'g'd) JOHN G. MURRAY, *Secretary.*

(Assignment on back of certificate signed by A. O. Beebe.)

Two certificates, numbered 14 and 23, each for 150 shares, the first dated April 3, 1883, and the second June 7, 1883, and otherwise exactly similar to No. 11, as set out above.

806 EXHIBIT C.

No. 26. 30 shares.

The Brierfield Coal & Iron Company of Alabama.

Capital, $750,000. Shares, $100 each.

This is to certify that C. S. Brice is the owner of thirty full-paid shares of one hundred dollars each in the capital stock of the Brierfield Coal and Iron Company of Ala., transferable only on the books of the corporation, in person or by attorney, in accordance with the by-laws of said corporation and on the surrender of this certificate.

In witness whereof the seal of the corporation and the signatures of the president and secretary are hereunto affixed.

Brierfield, Ala., Aug. 22, 1883.

[Seal The Brierfield Coal & Iron Company of Alabama.]

(S'g'd) T. J. PETER, *President.*

(S'g'd) JOHN G. MURRAY, *Secretary.*

(Usual blank assignment on back of certificate.)

Filed April, 1889.

J. W. DIMMICK, *Clerk.*

807 *Amendment to Answer of Thomas, Seney, & Brice.*

In the Circuit Court of the United States for the Middle District of Alabama.

W. L. CHAMBERS, as Trustee, Complainant,
vs.
THE BRIERFIELD COAL AND IRON COMPANY, SAMUEL Thomas, George I. Seney, & Calvin S. Brice *et als.*, Defendants. } In Equity.

By leave of the court first had and obtained, the defendants, Samuel Thomas, George I. Seney, and Calvin S. Brice, amend their joint and several answer herein by adding thereto the following averment: "The only agreement whereby these defendants ever became stockholders in said Brierfield Coal & Iron Company was the original subscription for the stock and bonds of said company signed by these defendants by the name of George I. Seney and associates, whereby they subscribed the amount of seventy-five thousand dollars upon the terms that for each nine hundred dollars paid in the sum of one thousand dollars in a six per cent. mortgage bond in said company and one thousand dollars in the capital stock of said company were to be paid to such subscribers; and defendants aver that upon the payment by them of each nine hundred dollars they did receive such mortgage bond for one thousand dollars, and also a

certificate for one thousand dollars of fully paid stock, pur-
808 suant to the terms of said subscription contract; and these defendants show unto the court that they never became subscribers to the capital stock of said company upon any other terms, and that they have fully paid and satisfied all that they were ever liable to pay as such stockholders; and they wholly deny that they or either of them are owing any balance whatever upon their said stock subscription, and show unto the court that the stock held by them in said company is full paid up, and not subject to further calls or assessments."

HUMES, WALKER, SHEFFEY & GORDON,
Att'ys for Thomas et als.

Filed by leave of the court this 3rd day of July, 1889.
J. W. DIMMICK, *Clerk.*

809 *Note of the Evidence Offered by Compl't & Defendants.*

In the Circuit Court of the United States for the Middle District of Alabama.

W. L. CHAMBERS, Trustee,
vs.
THE BRIERFIELD COAL AND IRON COMPANY & Others, Defendants. } In Equity.

Note of the evidence offered by the complainant on the hearing of this case.

1. The bill and amendment thereto, the exhibits, the report of the master in this case, and the exhibits and papers therein referred to in support of said report.

2. The deed of trust executed and delivered to Preston B. Plumb, trustee, by the Brierfield Coal and Iron Company, dated the first day of September, 1882, and the subsequent deed executed and delivered by said corporation to said Preston B. Plumb, trustee, dated the twenty-ninth day of July, 1887, with the certificates of the acknowledgment of said deeds respectively and of the registration of each of said deeds.

3. Five hundred bonds of the Brierfield Coal and Iron Company, each for the sum of one thousand dollars, dated the first day of October, 1882, and payable on the first day of October, 1912, and numbered consecutively from No. 1 to No. 500.

810 And the interest coupons of said bonds described in the report of the master.

4. The act of the Legislature of Alabama, approved December 12, 1884 (Session Acts, pages 255, 256, & 257), entitled "An act to amend and ratify the charter of the Brierfield Coal and Iron Company of Bibb county, Alabama."

5. The record books of the Brierfield Coal and Iron Company containing the organization of the company, the proceedings of the

stockholders and directors, and the subscriptions to the stock of the company that are stated and referred to in the report of the master.

6. The examinations taken under the orders of the court before J. W. Dimmick, special master, and certified and reported by him to the court, and the testimony therein stated and set forth, of the following-named witnesses, viz: W. L. Chambers, Thomas J. Peter, R. L. McCalley, John G. Murray, C. C. Huckabee, W. D. Carter, Kersly Carter, Jr., and B. H. Craig, and the depositions of Samuel Thomas, George I. Seney, & C. S. Brice, and the exhibits thereto.

THORINGTON & SMITH,
Sol'rs for Complainant.

The defendant, Esther A. Peter, offered in evidence chapter CVIII (108), Revised Statutes of Wisconsin, 1878—

Property rights of married women.

The defendants, Samuel Thomas, George I. Seney, & Calvin S. Brice, offered in evidence their deposition- taken & on file in this cause.

Filed this 3rd day of July, 1889.

J. W. DIMMICK, *Clerk.*

811 *Testimony Taken Before J. W. Dimmick, Sp. Master.*

In the Circuit Court of the United States for the Middle District of Alabama.

W. L. CHAMBERS, Trustee,
vs.
THE BRIERFIELD COAL & IRON CO. *et al.* } In Equity. No. 103.

In reference before J. W. Dimmick, as special master.

WEDNESDAY, *July 25th*, 1888.

Present: The complainant, by his solicitor, W. S. Thorington, Esq.; E. W. Pettus, Esq., representing Esther A. Peter, the Commercial Bank of Selma, the City National Bank of Selma, and J. T. Fitzgerald; Thos. H. Watts, Jr., Esq., representing Huckabee & McCally; R. W. Walker, Esq., representing Sam'l Thomas, Geo. I. Seney, and Calvin S. Brice; Patrick C. Massie, Esq., representing Brierfield Coal & Iron Co., Thos. J. Peter, & Jno. G. Murray, respondents; A. A. Wiley, Esq., representing W. D. & K. Carter, Jr.

Examination by W. S. THORINGTON, Esq.:

JNO. G. MURRAY, a witness called, sworn, and examined on the part of the complainant, being sworn, says:

I live at Brierfield, Ala.; have lived there over six years; my age is thirty; at present I am connected with W. L. Chambers, as trustee, and acting as agent. I have been interested and connected with the Brierfield Coal & Iron Company. My connection with it began in

May, 1882. At the organization of the company I was elected secretary; was secretary for two years. The company was
812 organized on May 4th, 1882. It was organized under the general laws of the State, in the first place. In making my answer in the first place, as being secretary for two years, at the expiration of two years I was elected secretary and treasurer. I continued as secretary and treasurer up to Dec. 15, '86; then I resigned the position of secretary, but have continued to be treasurer up to this date.

I have a book which contains the proceedings leading up to the organization and the organization itself.

The following were elected directors at the organization of the company: Caswell C. Huckabee, Amos A. Southwick, Rob't L. McCally, Jno. G. Murray, and Thos. J. Peter.

The directors elected Thos. J. Peter president, Amos. A. Southwick vice-president, Jno. G. Murray secretary and auditor.

The organization of the company has been kept up to the present time. All the offices are filled.

There was a special act of the Legislature of Alabama ratifying and confirming the organization of the company and conferring additional powers upon the company.

A certified copy is here offered in evidence and marked "Exhibit No. 1," approved Dec. 12, 1884. The company accepted and acted under that amendment.

The authorized capital stock of the company is $750,000.00, in shares of $100.00 each.

$375,000.00 of the capital stock was subscribed for May 4th, '82.

	T. J. Peter, subscribed for	1,200		$120,000
813	Mrs. E. A. Peter, subscribed for	500		$50,000
	Mrs. C. S. Plumb, "	500		50,000
Plumb & Hood,	"	500		50,000
Sam'l Thomas & associates,	"	750		75,000
Justin S. Morrill,	"	100		10,000
C. C. Huckabee,	"	150		15,000
R. L. McCalley,	"	50		5,000

The stock subscribed for was issued as follows:

T. J. Peter	1,000 shares
" trustee for E. T. Peter	50
" " F. J. Peter	50
" " Geo. F. Peter	50
" " Blanche E. Peter	50
Mrs. E. A. Peter	500
Mrs. C. S. Plumb	490
Plumb & Hood (issued to Mrs. C. S. Plumb)	500
Sam'l Thomas (issued to A. O. Beebe)	750
Justin S. Morrill	100

C. C. Huckabee never has been issued.

R. L. McCalley never has been issued.

The present owners of stock are as follows:

T. J. Peter holds	1	share
C. L. Bates	1	
E. T. Peter	1	
E. T. Peter, trustee for E. A. Peter	697	
Laura E. Williams	500	
814 Esther A. Peter	500	
Mrs. C. S. Plumb	990	
A. O. Beebe	800	
Calvin S. Brice	30	
Justin S. Morrill	110	
Jno. G. Murray	6	

T. J. Peter has paid for stock subscribed for by him	$83,640	85
Mrs. C. S. Plumb " her	43,089	78
Sam'l Thomas & associates " them	23,745	
Calvin S. Brice	810	
George I. Seney has paid on stock subscribed for by him	$22,800	
Mrs. E. A. Peter "	50,000	
Justin S. Morrill "	6,270	
R. L. McCally "	5,000	
C. C. Huckabee	2,166	
Jno. G. Murray has paid for stock	600	

These payments were made upon three calls made by the company: July 6, 1884, assessment 20 per cent. made; on April 20, 1885, assessment 7 per cent.; on January first, 1886, 30 per cent. These were the only calls ever made. I have given all payments made for stock and by whom made.

In May, 1887, there were sent to the company by Mrs. C. S. Plumb
495 past-due coupons of the bonds of the Brierfield Coal & Iron Co.
to be applied upon her stock subscription, but were in Au-
815 gust, 1887, returned to Mrs. Plumb at her request. At the time Plumb, trustee, demanded possession of the property of the company I held these 495 coupons as the treasurer of the company. The company turned over these coupons to Plumb, trustee, with the other property and papers. I returned the coupons to Mrs. Plumb on the trustee's order and without any order from the company. I was at the time acting as agent with P. B. Plumb, trustee, and returned the coupons to her in accordance with his instructions.

Very frequently we did not apply payments upon subscriptions at the time they were received, when such payment was made in coupons. There was no particular reason at this time, except that it was necessary to check over list of all bonds issued to ascertain whether the coupons sent me from bonds issued to party sending the coupons was entitled to such credit. At the time these coupons were received I was not present to make such credit for account, as I was ill, and after recovery from my illness was very busy in attending to other matters, and the credit was overlooked until after the property passed into the hands of the trustee. In checking up

this, among other matters, at the time, I communicated the fact to P. B. Plumb, trustee, of these coupons not having been placed to the credit of Mrs. Plumb's stock subscription, and then received from him the instructions before mentioned.

816 I had nothing to do otherwise than to return these coupons. These coupons were clipped from ninety-nine bonds issued to Mrs. C. S. Plumb. The gross amount of the coupons is $14,850.00. The balance due on the 57 per cent. call was $13,910.22. I received the coupons as a payment on the stock subscription of Mrs. C. S. Plumb. Before I returned the coupons P. B. Plumb, as trustee, took possession of the property of the company. I was then acting under his orders and as his agent, as trustee, in returning the coupons. There was a mortgage executed to Preston B. Plumb, trustee, upon the property of the company.

On July 6th, 1882, a meeting of the directors of the Brierfield Coal & Iron Company was held to consider a motion authorizing the president of the company to publish the following notice:

"Notice is hereby given, in conformity with the provisions of the statute in such cases made and approved, that there will be a meeting of the stockholders of the Brierfield Coal & Iron Company held at the office of said company, in the town of Brierfield, county of Bibb, State of Alabama, at nine o'clock a. m., on Friday, August 25th, 1882, to consider the propriety of placing a mortgage upon the property of said company and the issuance of bonds thereunder."

817 This motion was carried. It was published, beginning August 3rd, 1882, and ending August 24th, 1882, in the Bibb Blade, published at Centreville, in Bibb county, Ala.

The stockholders met on August 25th, 1882, and adjourned from that time to Sept. 1st, 1882.

There was a majority represented at meeting Aug. 25th. The whole amount subscribed was represented at meeting Sept. 1, 1882. On Sept. first, at that meeting, a mortgage to P. B. Plumb, trustee, was read, considered, and authorized by the stockholders to be ordered by the directors and spread on the minutes. Sept. first the directors met and considered that mortgage and directed the officers of the company to execute the mortgage to P. B. Plumb, trustee, which had been read in the directors' meeting.

Witness here is shown the paper, which he identifies as the original mortgage which was identified by the master and marked "Exhibit No. 2;" that this was the identical paper which had been copied on the minutes.

The mortgage was executed by T. J. Peter, president Brierfield Coal & Iron Company, attested by the seal of the company, and witnessed by the secretary, Sept. 1, 1882, and signed by P. B. Plumb, trustee. Four hundred and ninety-three (493) bonds, of one thousand dollars each, were issued under the mortgage. Of these bonds there were issued to T. J. Peter, trustee for E. T. Peter, five, of one thousand dollars each, numbered 1, 2, 245, 246, 247. Said bonds

were sold to Peter, trustee, at the rate of ninety cents on the dollar in cash.

These bonds were registered on the books of the company
818 in the name of T. J. Peter, trustee for E. T. Peter.

Of these bonds there were five issued to T. J. Peter, trustee for F. J. Peter, numbered 3, 4, 248, 249, 250, of the par value of one thousand dollars, and paid for in cash at ninety cents on the dollar.

These bonds are registered on the books of the company in the name of T. J. Peter, trustee for F. J. Peter.

Of these bonds there were issued to T. J. Peter, trustee, for G. F. Peter, five, numbered 5, 6, 189, 190, 191, of the par value of one thousand dollars, and were paid for in cash at ninety cents on the dollar, and now stand registered on the books of the company in the name of T. J. Peter, trustee for G. F. Peter.

Of these bonds there were issued to T. J. Peter, trustee for Blanche E. Peter, five, numbered 7, 8, 192, 193, 194, of the par value of one thousand dollars and paid for in cash at ninety cents on the dollar, which now stand registered on the books of the company in the name of T. J. Peter, trustee for Blanche E. Peter.

These bonds were paid for before they were issued.

Of these bonds there were issued to Mrs. C. S. Plumb ninety-nine (99), numbered 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 310, 311, 312, 489, 490, 491, 492, 493, 494,
819 309, and were paid for in cash at ninety cents on the dollar.

Of the bonds issued to Mrs. C. S. Plumb the following are now registered on the books of the company in her name: 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 310, 311, 312, 489, 490, 491, 492, 493, 494, 309. The other bonds issued to her are payable to bearer.

Of these bonds there were issued to Justin S. Morrill eleven, numbered 118, 119, 120, 121, 122, 123, 113, 114, 115, 116, 117, and were paid for in cash at ninety cents on the dollar. Of these bonds there stand registered in the name of Justin S. Morrill on the books of the company five, numbered 118, 119, 120, 121, 122. The others are payable to bearer.

Of these bonds there were issued to A. O. Beebe eighty-three (83), numbered 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 251, 252, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 262, 263, 264, 253, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 139, 140, 141, 142, 143, 144, 145, 254, 255, 256, 257, 258, 259, 260, 261, 265, and were paid for in cash at ninety cents on the dollar. They were paid for by Samuel Thomas & associates—Samuel Thomas, George I. Seney, and Calvin S. Brice. The three last names compose Sam'l Thomas & associates, and compose also George I. Seney & associates, down on the books of the company

both ways. Of these bonds there now stand registered on the books of the company in the name of A. O. Beebe, numbers 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 251, 252, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280,
820 281, 282. Of these bonds there stand registered on the books in the name of Geo. I. Seney, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 139, 140, 141, 142, 143, 144, 145. Of these bonds there stand registered on the books of the company in the name of Ester A. Peter, 254, 255, 256, 257, 258, 259, 260, 261, 265, the remaining four, 262, 263, 264, 253, are payable to bearer. These bonds were issued to Beebe by instruction of Sam'l Thomas, by whom they had been paid for. I know how they were divided between Sam'l Thomas & associates. Of the bonds issued — A. O. Beebe the following forty (40), 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 139, 140, 141, 142, 143, 144, 145, were allotted to Geo. I. Seney. The following forty (40), numbered 254, 255, 256, 257, 258, 259, 260, 261, 265, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 251, 252, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 262, 263, 264, 253, were allotted to Sam'l Thomas. Of these bonds the following three, numbered 280, 281, 282, were allotted to Calvin S. Brice. Of these bonds there were issued to C. C. Huckabee thirteen, as follows: 204, 205, 206, 207, 437, 438, 439, 440, 441, 442, 450, 451, 452. These bonds were payable to bearer. They were paid for in cash at ninety cents on the dollar. Of these bonds there was issued to Jno. G. Murray one, numbered 283. It stands on the books of the company registered in the name of Jno. G. Murray. It was paid for in cash at ninety cents on the dollar.

821 Of these bonds there were issued Esther A. Peter fifty (50) as follows: 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 74, 75, 76, 77, 123, 124, 125, 126, 127, 180, 181, 182, 183, 184, 185, 186, 187, 188. These bonds all stand registered on the books of the company in the name of Esther A. Peter. They were paid for in cash at ninety cents on the dollar.

Of these bonds there were issued to T. J. Peter two hundred and sixteen (216), numbered 360, 362, 363, 364, 365, 366, 367, 368, 369, 370, 306, 307, 308, 313, 314, 315, 316, 317, 318, 319, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 374, 375, 376, 377, 378, 379, 380, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 459, 460, 461, 461, 463, 464, 465, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 495, 496, 497, 498, 499, 500, 320, 321, 322, 323, 195, 196, 197, 198, 199, 200, 201, 202, 203, 208, 209, 210, 211, 212, 213, 214, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 322, 325, 326, 327, 328, 329, 330, 331, 332, 333, 381, 382, 383, 384, 384, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435,

436, 453, 454, 455, 456, 457, 458, 371, 372, 373, 78, 359, 361, 386, 387, 388, 389, 229, 230, 231, 232, 233, 234, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228. These bonds were paid for at ninety cents on the dollar in cash. Of these bonds paid
822 for by T. J. Peter there now stand registered on the books of the company in the name of Esther A. Peter 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 360, 362, 363, 364, 365, 366, 367, 368, 369, 370, 306, 307, 313, 314, 315, 316, 317, 318, 319, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 374, 375, 376, 377, 378, 379, 380, 390, 391, 392, 393, 394, 395, 96, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 495, 496, 497, 498, 499, 500, 320, 321, 322, 323. The remainder are payable to bearer. There were seven bonds not originally issued that were used as collateral security for a loan of five thousand dollars made from the Commercial Bank of Selma, endorsed by Jno. G. Murray and Thomas J. Peter. These bonds were numbered 443, 444, 445, 446, 447, 448, 449. T. J. Peter, as president of the Brierfield Coal & Iron Company, borrowed money from the Commercial Bank of Selma. He and myself became securities on the paper for the company. It has been paid to the bank by Jno. G. Murray, one of the endorsers thereon.

There were two notes, each for $2,500.00, and upon payment of these notes to the bank by the said Jno. G. Murray said notes and bonds were transferred to him by said bank without recourse.

Jno. G. Murray now holds the seven bonds and the two notes. He holds them the same as the Commercial Bank of Selma
823 held them. One of these notes matured Sept. 13, 1887, and the other matured Sept. 21, 1887. On Oct. 26, 1887, Jno. G. Murray paid the note, and interest thereon, maturing Sept. 13, 1887. May 3, 1888, Jno. G. Murray paid in full, with interest thereon, the one maturing Sept. 21, 1887. That is all my title to these bonds.

In registering a bond I first enter upon the bond register the date of issue, the number of bond, party to whom issued, party to whom payable; then upon the bond I made a duplicate entry of that made upon register. I give sample of register entry on bond No. 373, as follows:

Date of registry.	In whose name registered.	Registrar.
Nov. 23, 1883.	T. J. Peter.	Jno. G. Murray.
Jan. 13, 1887.	Bearer.	Jno. G. Murray.

In all cases where the bonds were registered on the books there was also a note of same registration bond itself. When the loan of five thousand dollars, which Jno. G. Murray has paid, was made with the Commercial Bank of Selma it was agreed by Thomas J. Peter, president of the Brierfield Coal & Iron Company, that should said Jno. G. Murray be compelled to pay, as endorser, this loan

there should be delivered to him as security for such payment thereof the seven bonds of the Brierfield Coal & Iron Co. then in the treasury of said company, these bonds being numbered from
443, 444, 445, 446, 447, 448, 449. It was found upon placing
824 bonds as collateral for this loan that numbers 473, 474, 475
had previously been placed with the Commercial Bank of Selma as security for a different loan. Said Thos. J. Peter then substituted for bonds numbered 473, 474, 475 bonds numbered 371, 372, 373, which had previously been issued to him and paid for at ninety cents on the dollar. These bonds were used as said collateral and were delivered to said Jno. G. Murray by the Commercial Bank of Selma upon payment of this loan and are now held by him in lieu of bonds numbered 473, 474, 475.

In taking up this loan I got four bonds that had never been sold and three that had been issued to Peter. The other three bonds of the company that had never been sold are still held by the Commercial Bank of Selma. I have never been repaid by the company. I simply paid it to prevent myself from being sued and also under the agreement had with said Thos. J. Peter, president of the Brierfield Coal & Iron Company. Ninety cents on the dollar in cash was the best price that could be had for the bonds. The issue and sale of the bonds was necessary to develop the property. The money received from the sale of all the bonds was used to develop the property. Every dollar of every loan made to the Brierfield Coal & Iron Co. went into the property. I think in
825 cash there was between $700,000 and $800,000.00 put into the
property in buying, improving, and operating it. The interest on all the bonds issued to Mrs. E. A. Peter has been paid up to April 1st, 1886, and interest on all the bonds issued to T. J. Peter, as trustee, had been paid up to April 1st, 1886; the interest on all the bonds issued to T. J. Peter has been paid up to April 1st, 1886; the interest on all the bonds issued to Mrs. C. S. Plumb has been paid, according to the books of the company, up to April 1st, 1885. The books of the company do not show any payment of coupons which were sent by Mrs. C. S. Plumb to the company as a payment for her stock, as before stated. These 495 coupons on ninety-nine bonds so sent by Mrs. C. S. Plumb were not cancelled and are not in possession or control of the company. The interest upon the bonds of Sam'l Thomas has been paid up to April 1st, 1887; the interest upon the bonds of Geo. I. Seney has been paid up to April 1st, 1887; the interest upon the bonds of Justin S. Morrill has been paid up to April 1st, 1887; the interest upon the bonds of C. S. Brice has been paid up to Oct. 1st, 1887, and the interest upon the bond of Jno. G. Murray has been paid up to Oct. 1st, 1887; interest upon the bonds of C. C. Huckabee has been paid up to Oct. 1, 1887. The present
holders of bonds and coupons are as follows: T. J. Peter, trus-
826 tee, holds 20 of these bonds as issued to him; Mrs. M. S.
Pomeroy, of Washington, D. C., holds nine, being numbered 229, 230, 231, 232, 233, 234, heretofore issued to T. J. Peter; 262, 263, 264, originally issued to A. O. Beebe; Justin S. Morrill holds eleven of these bonds as issued to him; Mrs. C. S. Plumb holds one hun-

dred of these bonds, ninety-nine as issued to her and number 253 originally issued to A. O. Beebe; Geo. I. Seney holds forty of these bonds, registered as hereinbefore stated; Sam'l Thomas holds twenty-seven of these bonds, numbered 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 251, 252, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279; C. S. Brice holds three of these bonds, numbered as hereinbefore stated; J. T. Fitzgerald, of Marion, Ala., holds thirteen of these bonds originally issued to C. C. Huckabee; Jno. G. Murray holds one of these bonds as heretofore issued to him and holds seven other, as hereinbefore stated.

The Commercial Bank of Selma holds twenty-seven of these bonds, numbered 434, 435, 436, 453, 454, 455, 456, 457, 458, 200, 201, 202, 203, 235, 236, 237, 238, 239, 240, 195, 196, 197, 198, 198, 443, 444, 445; twenty-four of these given were issued to T. J. Peter and the other three were the three of the unsold bonds of the Brierfield Coal & Iron Co. The City National Bank of Selma holds twenty-eight of these bonds, originally issued to T. J. Peter, numbered 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 423, 424, 425, 426, 427, 428, 429, 208, 209, 210, 211, 212, 213, 214, 430, 431, 432, 433.

827 The Alabama National Bank of Birmingham, Ala., holds nine of these bonds heretofore issued to T. J. Peter, and numbered 241, 242, 243, 244, 381, 382, 383, 384, 385. J. T. Fitzgerald, of Marion, Ala., holds other seven of these bonds heretofore issued to T. J. Peter, numbered 78, 359, 361, 386, 387, 388, 389. Esther A. Peter holds one hundred and ninety-eight of these bonds, fifty as heretofore issued to her, and numbers 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, originally issued to T. J. Peter; 254, 255, 256, 257, 258, 259, 260, 261, 265, originally issued to A. O. Beebe; 360, 362, 363, 364, 365, 366, 367, 368, 369, 370, 306, 307, 308, 313, 314, 315, 316, 317, 318, 319, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 356, 358, 374, 375, 376, 377, 378, 379, 380, 390, 391, 392, 392, 394, 395, 396, 397, 397, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 495, 496, 497, 498, 499, 500, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, heretofore issued to T. J. Peter. All of these bonds are registered in the name of Ester A. Peter.

Mrs. E. A. Peter has coupons as follows, due and unpaid:

April 1, 1886	285
October 1, 1886	281
828 April 1, 1887	245
October 1, 1887	218
April 1, 1888	218

On bonds issued to Mrs. C. S. Plumb the following coupons are due and unpaid, according to the books of the company:

April 1, 1885	99
October 1, 1885	99

April 1, 1886	99
October 1, 1886	99
April 1, 1887	99
October 1, 1887	99
April 1, 1888, 99	99

Those 495 coupons received from Mrs. Plumb, as heretofore stated, were returned to her by order of the trustee. Coupons on bonds held by Sam'l Thomas are due and unpaid as follows:

April 1, 1887	27
October 1, 1887	27
April 1, 1888	27

Coupons on bonds held by Geo. I. Seney are due and unpaid as follows:

April 1, 1887	40
October 1, 1887	40
April 1, 1888	27

Coupons on bonds held by Justin S. Morrill are due and unpaid as follows:

	April 1, 1887	11
	October 1, 1887	11
829	April 1, 1888	11

Coupons on bonds held by Calvin S. Brice are due and unpaid as follows:

October 1, 1887	3
April 1, 1888	3

Coupons on bond number 283, held by Jno. G. Murray, are due and unpaid as follows:

October 1, 1887	1
April 1, 1888	1

Coupons on thirteen bonds originally issued to C. C. Huckabee and now held by J. T. Fitzgerald are due and unpaid as follows:

October 1, 1886	13
April 1, 1887	13
October 1, 1887	13
April 1, 1888	13

Coupons on bonds held by Mrs. M. S. Pomeroy are due and unpaid as follows:

October 1, 1887	9
April 1, 1888	9

On the seven bonds held by Jno. G. Murray as collateral security there are due and unpaid coupons as follows:

April 1, 1887	7
October 1, 1887	7
April 1, 1888	7

830 I have stated as far as I can the amount of coupons outstanding. The execution of an additional deed of trust was authorized by a resolution of the board of directors July 29th, 1887. That resolution is found on page 33 of the minutes of the company. A demand was made in writing by the trustee that the property should be turned over to him after the execution of the additional deed of trust, a copy of which will be found on page 35 of the minutes of the Co. August 2nd the directors passed a resolution to the effect that his demand be acceeded to and the entire property of the company be turned over to him, a copy of which resolution will be found on page 36 of the minutes of the company. The trustee took possession through me as his agent. That was Mr. P. B. Plumb, trustee. A copy of the letter appointing me his agent will be found on page 35 of the minutes of the company. He continued in possession through me as his agent up to the time of Mr. Chambers' appointment. Mr. Chambers has been in possession as trustee since the resignation of Mr. Plumb. I have been acting as his agent.

The original deed of trust was here introduced by the complainant and marked "Exhibit 3;" identified by the master.

All of the works have been in operation since P. B. Plumb took possession as trustee except the nail factory and the rolling mill, and are still in operation. I know the facts regarding the
831 endorsement of all papers that were made for the loans made for the Brierfield Coal & Iron Company. As already stated, T. J. Peter and myself endorsed two notes for $2,500.00 each for money borrowed from the Commercial Bank of Selma. The details I have already stated. There were further loans from the Commercial Bank of Selma, endorsed by T. J. Peters, as follows:

One note for $7,500, which matured Dec. 23, 1887.
One note for 5,000, which matured Aug. 18, 1887.
One note for 3,500, which matured Aug. 26, 1887.
One note for 4,000, which matured Jan. 31, 1888.
One note for 2,500, which matured Sept. 15, 1887.

In addition to endorsing the above-mentioned notes, the said T. J. Peter placed with the Commercial Bank of Selma, as collateral security for same, twenty-seven of the first-mortgage bonds of the Brierfield Coal & Iron Company, numbered as follows—these bonds I know to have been the personal property of T. J. Peter, except the three which I have heretofore mentioned:

The note for $7,500 was secured by nine bonds numbered 434, 435, 436, 453, 454, 455, 456, 457, 458.

The note for 3,500 was secured by four bonds numbered as follows: 200, 201, 202, 203. The note for $5,000 was secured by six bonds numbered as follows: 235, 236, 237, 238, 239, 240. The note for $4,000 was secured by five bonds numbered as follows: 195, 196, 197, 198, 199. The note for $2,500 was secured by three bonds
832 numbered as follows: 443, 444, 445. These latter three bonds, 443, 444, 445, were the unsold bonds of the Brierfield Coal & Iron Company heretofore referred to in my evidence regarding those bonds. T. J. Peter furnished as collateral on the loan endorsed by

him and Jno. G. Murray from the Commercial Bank of Selma bonds numbered 371, 372, 373, as heretofore stated by me. The money borrowed from the Commercial Bank of Selma was used by the Brierfield Coal & Iron Company in carrying on its business. These bonds were deposited as collateral security at the date the money was borrowed. There was an agreement between Mr. Peter and the Brierfield Coal & Iron Company about his bonds. The agreement between Mr. Peter and the Brierfield Coal & Iron Company was that Mr. Peter should be indemnified for any loss that he might sustain by becoming security for said company, placing his property as collateral for loans for said company. The agreement was made by Mr. Peter, as president of the directors of the company, with himself. There was no writing to that effect. There was a resolution of the directors of the Brierfield Coal & Iron Company to indemnify Mr. Peter from any loss on account of his endorsements and placing his bonds as security for any loan to the Brierfield Coal & Iron Company as follows: "Whereas the said Thos. J. Peter has become the surety for said company
833 for loans from time to time had for the sum of $77,800.00, which money has been used in the current business of said company, and has put his private property in pledge to secure the indebtedness to various persons and banks, all of which indebtedness appears on the books of said company as unpaid:

Resolved, That the balance unpaid in the said stock subscription, namely, the sum of $36,359.15, shall not be called for or demanded of said Thos. J. Peter, but shall remain in his hands as indemnity to him against his said liabilities of said company so secured by him, and he shall be in nowise liable to pay — balance that is or may be owing to said company on said stock subscription; but the said stock shall be held and considered as fully paid up, and the unpaid balance due thereon shall be fully cancelled and shall so remain credited on the books of the company until said company shall have fully released and discharged him from his liabilities for said company and shall have released the property pledged by said Thos. J. Peter as security for the debts of said corporation. The secretary of said company shall deliver to said Thos. J. Peter a certificate for his stock as fully paid up, and said Peter may, if he sees proper to, issue a transfer of said certificates of stock on the books of the com-
834 pany as stock fully paid up." Nothing has been paid on the debt to the Commercial Bank of Selma. The notes have been renewed from time to time, and are live to-day, and the original security is still held by the Commercial Bank of Selma. I also know that the Brierfield Coal & Iron Company borrowed money from the City National Bank of Selma as follows:

$5,000, maturing August 23, 1887.
3,500, October 11, 1887.
2.000, August 15, 1887.
3,500, Jan. 5, 1888.

T. J. Peter endorsed these notes personally and placed with the City National Bank of Selma as collateral security for the payment of same—on note $5,000, ten bonds, numbered 324, 325, 326, 327,

328, 329, 330, 331, 332, 333; on note $3,500, maturing Oct. 11, 1887, seven bonds, numbered 423, 424, 425, 426, 427, 428, 429; on note $3,500, maturing Jan. 5, 1888, seven bonds, numbered 208, 209, 210, 211, 212, 213, 214; on note $2,000, maturing August 15, 1887, four bonds, numbered 430, 431, 432, 433. These bonds, I know, were the personal property of T. J. Peter. There has been nothing paid on the loans to the City National Bank of Selma. The money thus borrowed from the City National Bank of Selma was used by the Brierfield Coal & Iron Co. in carrying on its business. The bonds
835 securing these loans were deposited at the time the money was borrowed. It was a part of the indebtedness referred to in the resolution. The Brierfield Coal & Iron Co. borrowed from the Alabama National Bank of Birmingham, Ala.—

$3,500, maturing Sept. 16, 1887.
4,500, maturing Oct. 11, 1887.

The notes given for these loans were endorsed by T. J. Peter personally, and said Peter placed with the Alabama National Bank as collateral security for the payment thereof bonds as follows: For the loan of $3,500, four bonds, numbered 231, 232, 233, 234; for the $4,500 loan, five bonds, numbered 381, 382, 383, 384, 385. These bonds, I know, were the personal property of said T. J. Peter. The money thus borrowed from the Alabama National Bank was used by the Brierfield Coal & Iron Co. in carrying on its business. The bonds were deposited with the bank on the day the money was borrowed. The Brierfield Coal & Iron Co. owes J. T. Fitzgerald fifteen thousand dollars. T. J. Peter endorsed personally the notes given J. T. Fitzgerald for this loan, and placed with J. T. Fitzgerald seven bonds as collateral therefor, numbered as follows: 78, 359, 360, 361, 386, 387, 388, 389. I know that these bonds are the personal property of said T. J. Peter. The company received the fifteen thousand dollars and used it for carrying on its business. Mr. Fitzgerald also holds thirteen other bonds, which were issued to C. C. Huckabee,
836 but I don't know the circumstances under which he obtained them. Nothing has been paid on the fifteen-thousand-dollar debt to Mr. Fitzgerald. The resolution of the directors covers the bonds placed with Fitzgerald and the Alabama National Bank as well as those of the Brierfield Coal & Iron Company. The Brierfield Coal & Iron Company borrowed from the Hanover Nat'l Bank of New York twenty-seven thousand five hundred dollars ($27,500), the money being used by the Brierfield Coal & Iron Co. in carrying on its business. T. J. Peter and P. B. Plumb endorsed personally the notes given the Hanover National Bank for this loan. The Brierfield Coal & Iron Company purchased from the Pennsylvania Steel Company of Harrisburg, Pa., steel rails which were laid on the railroad of the Brierfield Coal & Iron Co., and owe the said Pennsylvania Steel Co. for those rails $2,567.70 and interest. T. J. Peter and P. B. Plumb endorsed personally the notes given the said Pennsylvania Steel Co. for those rails. The Brierfield Coal & Iron Co. purchased from the Sloss Furnace Co. of Birmingham, Ala., pig-iron which was used in the rolling mill of said company for the purpose of making nails, and owe the Sloss

Furnace Co. for said pig-iron $4,829.11 and interest. T. J. Peter endorsed personally the notes given the said Sloss Furnace Co. for this pig-iron. The Brierfield Coal & Iron Co. purchased from the Sloss Iron & Steel Co. of Birmingham, Ala., pig-iron
837 which was used by said Brierfield Coal & Iron Co. for the purpose of making nails, and owe said Sloss Iron & Steel Co. for this pig-iron $3,020.79 and interest. T. J. Peter endorsed personally the notes given the Sloss Iron & Steel Co. for this pig-iron. The money borrowed from the Hanover National Bank of New York was borrowed exclusively for the use of the company, and was used by the company. I cannot state what specific application was made of the money. I cannot say that it was used for buying lands. Nearly all the money was used for purchase-money. I am not able to say for what specific purpose the money was used without the books of account and vouchers, but I know that it was used for carrying on the business. The money borrowed from the Commercial Bank of Selma, on which T. J. Peter and Jno. G. Murray were personal endorsers, was used as a part of the purchase-money of the Bibb Furnace property from W. D. & K. Carter, Jr. The rails purchased from the Pennsylvania Steel Co. were placed on the road-bed of the Brierfield Coal & Iron Co., and are still there and have been used by the company ever since. According to the minutes there was no authority to Mr. Peter from the company to borrow various sums of money testified about. The various sums of money borrowed by Mr. Peter for the company were re-
838 ceived and used by the company in its business. The books of the company show accurately what sums were borrowed by Mr. Peter, and from whom they were borrowed and when. The directors of the company were notified of these transactions. There was no objection on the part of any of the directors to borrowing any of the money that was borrowed. There has never been more than one or two changes in the directory. The first directory at the organization of the company was Caswell C. Huckabee, Amos A. Southwick, Rob't L. McCally, Jno. G. Murray, and T. J. Peter. On July 6th, 1882, R. L. McCally tendered his resignation as a director, which was accepted. Nelson Robinson, of 78 Wall street, New York, was elected to fill the vacancy. On April 20, 1885, Nelson Robinson, of 78 Wall St., New York, tendered his resignation as director, and Edward T. Peter was elected to fill the vacancy. On July 29, 1887, Amos A. Southwick tendered his resignation as a director, and Chas. L. Bates was elected to fill the vacancy. The present directory of the company is T. J. Peter, C. C. Huckabee, Jno. G. Murray, who have been directors of the company from organization to the present time, C. L. Bates, and E. T. Peter. T. J. Peter, Jno. G. Murray, E. T. Peter, and C. L. Bates were present at the time resolution of indemnity to T. J. Peter for his endorsements was passed. The proper notice, according to the by-laws of
839 the company, had been given to C. C. Huckabee, the other director. Later on a letter received from him explained his absence.

ANNISTON, ALA., *July 29th*, 1887.

Mr. Peter.

DEAR SIR: I am too unwell to go to Brierfield to-day, but if Saturday or Monday will answer I will come if I am able; very sorry I cannot go to-day. Let me hear from you.

Respectfully,

(Signed) C. C. HUCKABEE.

The relation of T. J. Peter and E. T. Peter are that of father and son. (Witness was here shown twenty-eight bonds produced by the City National Bank of Selma, and says:) These bonds are the bonds heretofore described by me as being held by the City National Bank of Selma as collateral security for loans made by the Brierfield Coal & Iron Co., endorsed by T. J. Peter personally, to the amount of fourteen thousand dollars. These bonds are numbered 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 423, 424, 425, 426, 427, 428, 429, 208, 209, 210, 211, 212, 213, 214, 430, 431, 432, 433. All have the October, 1887, coupons attached, and all falling due since that time, being fifty-six coupons now past due. These are the bonds I have heretofore stated Mr. Peter hypothecated to the City National
840 Bank of Selma. I have a receipt from the bank given for the bonds given as collateral.

Said bonds were filed by the master and allowed of this date, and are returned to the City National Bank of Selma for safe keeping.

Witness was here shown notes produced by the City National Bank of Selma and identified same as being the notes for which the bonds were hypothecated as collateral

The protest fees in four notes, amounting to $11.64, were proved before the master.

The actual amount received from the bank for the notes was the face of the notes less eight per cent. I have no actual statement of the amount received. I can testify to actual amount by reckoning bank discount at eight per cent. The money received for the note was the face of the note less interest at eight per cent. per annum from the date of the note to maturity thereof.

(Twenty bonds were here shown the witness, being produced by Mr. J. T. Fitzgerald, and in reference to these twenty bonds witness says:) These twenty bonds are the bonds heretofore described by me as being held by J. T. Fitzgerald, of Marion, Ala., as collateral security for a loan of fifteen thousand dollars, and are numbered 78,
359, 361, 386, 387, 388, 389, 204, 205, 206, 207, 437, 438, 439,
841 440, 441, 442, 450, 451, 452. Bonds number-78, 359, 361, 386, 387, 388, 389 have attached all coupons beginning with April 1, 1887, being twenty-one coupons now past due. Bonds 437, 438, 439, 440, 441, 442 have all coupons attached beginning with October, 1887, being twelve coupons now past due. Bonds 450, 451, 452, 204, 205, 206, 207 have all coupons attached beginning with October 1, 1887, being fourteen coupons now past due, the remaining twenty-six coupons being of October, 1886, and April, 1887 on bonds numbered 437, 438, 439, 440, 441, 442, 450, 451, 452, 204, 205,

206, 207, as being past due and unpaid coupons of said bonds so held by Fitzgerald.

Said bonds and coupons are filed and allowed by the master and returned to said J. T. Fitzgerald for safe keeping.

Examination by P. C. MASSIE, Esq., for the Co.:

Witness was here shown two notes and seven bonds, and he says:

I recognize these notes as being the notes heretofore referred to by me given to the Commercial Bank of Selma by the Brierfield Coal & Iron Co. for money loaned said company and endorsed by T. J. Peter and Jno. G. Murray. These notes have been paid to the Commercial Bank of Selma by Jno. G. Murray, one of the endorsers thereon, in accordance with an agreement, and have been transferred to Jno. G. Murray by the Commercial Bank of Selma. I recognize these bonds as being the seven bonds placed as collateral security
842 for a loan made the Brierfield Coal & Iron Co. by the Commercial Bank of Selma and endorsed by T. J. Peter and Jno. G. Murray, as heretofore stated. These bonds have attached all coupons beginning with April 1, 1887, being twenty-one coupons past due and unpaid.

Bond No. 283 was presented the master and identified by him as bond purchased by Jno. G. Murray from the Brierfield Coal & Iron Co., for which he paid ninety per cent. of the face value in cash. This bond has attached all coupons beginning with October 1, 1887, making two coupons past due and unpaid to the present time.

Said bond was filed and allowed by the master and returned to Jno. G. Murray for safe keeping.

There is due me by the Brierfield Coal & Iron Co. twenty-five hundred dollars, with interest from Sept. 13, 1887; twenty-five hundred dollars, with interest from Sept. 21, 1887.

The seven bonds and coupons last above proved and the two notes for $2,500 each, originally given by the Brierfield Coal & Iron Co. to the Commercial Bank of Selma and transferred to Jno. G. Murray, he having paid the same, with interest thereon, as last above stated, are filed and allowed by the master and the securities returned to the owner for safe keeping.

Examination by Mr. THORINGTON:

W. D. & K. Carter, Jr., had a first lien upon the Bibb Fur-
843 nace property of the Brierfield Coal & Iron Co at the time P. B. Plumb, trustee, took possession. It was a mortgage lien for purchase-money. The property can be identified by reference to the deed of W. D. & K. Carter, Jr., to said Brierfield Coal & Iron Co. The amount of lien when bill of P. B. Plumb, trustee, was filed was in mortgage notes $11,474.80; $3,900 on contract between said Carters and the Brierfield Coal & Iron Co. was held for the protection of the said Brierfield Coal & Iron Co. against certain garnishments served upon them and which were then pending.

All payments have been made on Carter debt except $3,900 by trustee by money secured from the sale of trustee's certificates that were authorized by order of the court. I cannot give any accurate information as to garnishment suits. I have the original contract with the Carters. There was a modification of the original contract between the Carters and the Brierfield Coal & Iron Company. I have it. There were two modifications to my knowledge of the original Carter contract of purchase. There was the $3,900 contract, and there was another regarding the issue of notes on the non-negotiable paper. These latter have been paid. I cannot state what was the amount due the Carters after all the garnishments were answered.

My knowledge and my understanding of the matters were
844 that everything was paid except the $3,900 in question. I have stated all I know about the Carter debt. The State of Alabama has a first lien for purchase-money on section 16, township 22 north, range 4 west, amounting to $3,825.00. A small difference of $5.00 is still unpaid. This was also paid out of money received from sale of trustee's certificates issued in accordance with an order of the court. B. B. Lewis had a lien which was transferred to the first National Bank of Birmingham, Ala., amounting to about $700.00, which was for purchase-money for certain lands bought from said B. B. Lewis. By compromise this lien has been receipted in full by the payment of $403.12, and was paid with money obtained from the sale of trustee's certificates issued under an order of the court. French Nabors had a lien upon certain lands purchased from said Nabors, amounting to about $2,523.00. This lien has also been discharged with monies received from sale of trustee's certificates issued by order of the court. The Baldwin Locomotive Works had a lien for purchase-money on locomotive number 2 of the Brierfield Coal & Iron Company at the time of the filing of said bill of the trustee of $1,092.52. This lien has also been discharged by monies received from the sale of trustee's certificates issued under an order of the court. The Memphis National
845 Bank hold a lien on a consignment of 6,100 kegs of nails, securing a loan made by said bank to the Brierfield Coal & Iron Co. amounting to $12,200.00. Part of these nails have been disposed of, and the proceeds obtained have been applied to the debt to the Memphis National Bank. I cannot give exact sum applied; the other part remains there in same state as at time of filing of trustee's bill. I think the nails still held are sufficient to pay the balance due; the debt is past due. The laborers and operatives had a lien upon the property at the time the trustee was appointed, amounting to between ten and twelve thousand dollars. This lien has also been discharged by sale of trustee's certificates, issued under an order of the court. We had some iron rails from the East Tenn., Va. & Ga. road; a great many of them were used in our rolling mill; some of them were placed on our railroad. We got some rails from the East Tenn., Va. & Ga. R'y Co. once; they were placed on our road-bed, but I know nothing of the contract by which I obtained them; Mr. Peter made the contract. I don't think there ever was a written contract. A great many

of these rails have been replaced by new steel rails, the original rails having been used by the company for other purposes. That was
before trustee was appointed. There was about $800,000.00
846 put in the property. We got some property from C. C. Huckabee and R. L. McCally. That property was bought in accordance with a written contract made between C. C. Huckabee and T. J. Peter for the Brierfield Coal and Iron Co. I have not it with me. I do not remember exact terms of contract without reference to it. The rolling mill and tenement houses were erected on some of the land bought; I should judge about six hundred acres of land; about four hundred we had mill privileges over. As I understand the possession of the property, McCally had an interest in it, but C. C. Huckabee owned the property in his own right, having borrowed five thousand dollars from McCally. He gave said R. L. McCally, on the contract with T. J. Peter for the Brierfield Coal & Iron Co., an interest amounting to said five thousand dollars. I think the consideration for the property was $45,000.00. It has all been paid at different times. I cannot give exact amounts or dates. I would not state positively how much was paid before the organization of the company. It was paid in money to the amount of $25,000.00, or the equivalent of money; by the equivalent of money I mean removing garnishments, judgments, and debts that were upon the property. The balance was paid on the property in this way; C. C. Huckabee subscribed to the capital stock of the Brierfield Coal
& Iron Co. $15,00; R. L. McCally subscribed to the capital
847 stock of the Brierfield Coal and Iron Co. $5,000.00, transferred to him by C. C. Huckabee, as heretofore stated. C. C. Huckabee was paid this $15,000.00 in exactly the same manner as other stockholders in said Brierfield Coal & Iron Company were paid for money paid to said company for their stock subscriptions, by a delivery of bonds to him. We delivered fifteen bonds to him, but he owed us money that we had advanced for legal services rendered him by Pettus & Dawson, and returned two bonds. These legal services were rendered by said Pettus & Dawson in different suits that were brought attacking the title of the property purchased from said C. C. Huckabee, also to the Bibb Furnace property; the titles to both of which the said C. C. Huckabee has warranted to the company and the Carters, and were legal services C. C. Huckabee agreed to pay under written contract. I don't know exactly what the amount of the legal services were without reference. There were also other monies due the Brierfield Coal & Iron Co. by said C. C. Huckabee on account of coal furnished him, and other items which were stated in a written account delivered to said C. C. Huckabee on the day the bonds were delivered him. We did not give McCally any bonds; he did not pay for any. Five thousand dollars was applied on his stock. I never gave him any receipt;
if Mr. Peter gave him a receipt he gave it before I went to
848 Brierfield. I have not seen the receipt attached as an exhibit to his answer.

Witness is here shown a receipt attached as an exhibit to answer of C. C. Huckabee, and says:

Said receipts are dated before my arrival at Brierfield, and I know nothing about them. Mr. Huckabee has paid $2,166.00 on stock subscription; paid by coupons clipped from bonds delivered to him. My statement on yesterday that Huckabee paid ninety cents on the dollar in cash for bonds, I meant its equivalent in cash, which was the purchase-money for lands. Mr. McCally's subscription on stocks was paid in same way as Huckabee's. I know of no agreement with McCally except the terms of the original subscription list. This appears on page 10 of the minutes, and reads as follows: "In accordance with a resolution adopted by the stockholders of the Brierfield Coal & Iron Company held at Brierfield on May 4, 1882, and the direction of the directors held at same place on the evening of same day, I, T. J. Peter, president of said company, do now receive subscriptions to the capital stock of said company upon the following terms as required so to do both by the stockholders and the directors, for the purpose of raising the sum of $450,000.00 with which to purchase certain coal and iron properties and to open and operate coal and iron ore mines, to
849 erect rolling mill and to erect coke ovens and blast furnace, and to produce coal and to manufacture coke and iron. To build about five miles of railroad tract connecting the coal mines, coke ovens, and the iron-ore bank with the blast furnace and rolling mill. Now, therefore, the undersigned agree to pay said company the amount respectively set opposite our names, in such sums and at such times as the directors of said company may require, and to receive from said company for each nine hundred dollars paid in, the sum of one thousand dollars in a six per cent. mortgage bond in said company, and nine hundred dollars in the capital stock of said company. Not more than — per cent. of which subscription to be called for during one month."

Signed by—

T. J. Peter and associates	$120,000
E. A. Peter	50,000
R. L. McCally	5,000
C. C. Huckabee	15,000
Geo. I. Seney & associates	75,000
C. S. Plumb	50,000
Plumb & Hood	50,000
Justin S. Morrill	10,000

When stock and bonds were first issued there were issued for every nine hundred dollars paid one first-mortgage bond and ten shares of the capital stock of the Brierfield Coal & Iron Co.
850 No shares of stock were issued to Huckabee; no bonds were issued to McCallly and no stock. I said he had paid $5,000.00 into the company. The $5,000.00 due McCally was considered cash also paid to Huckabee, and has never been paid to Huckabee except $15,000.00 less expenses and the credit to McCally. I have made a complete statement of everything that has been paid upon bonds and stocks. When bonds and stock were originally issued there were issued for every nine hundred dollars received in cash one first-

mortgage bond and ten shares of the capital stock of the company. There was afterwards paid on calls of the company at different times about fifty-seven per cent. upon the stock issued in the manner as stated heretofore, and the exact amount paid by each stockholder I have already given. The following is a copy of the first stock issued:

Number 1. Brierfield Coal & Iron Company. Shares, $100 each.

Capital, $750,000.00.

This is to certify that Esther A. Peter is the owner of one hundred and fifty full-paid shares of $100.00 each in the capital stock of the Brierfield Coal & Iron Company of Alabama, transferable only on the books of the corporation, in person or by attorney, in accordance with the by-laws of said corporation and on surrender of this certificate.

In witness whereof the seal of the corporation and the sig-
851 natures of the president and secretary are hereunto affixed.

Brierfield, Ala., Oct. 9, 1882.

(Signed) T. J. PETER, *President.*

[SEAL.]

Attest: JNO. G. MURRAY, *Secretary.*

A certificate similar to this for ten shares was issued to each subscriber upon payment of nine hundred dollars and as given one bond. Some of the original certificates are outstanding. The new certificates are in the same form as the old ones. Every stockholder recognized the fact that when the call was made he owed the money upon the stock issued by paying the assessment as the company made the call. There has been no written agreement of subscription other then the first one. The amounts paid by subscribers amount to ninety per cent. on the bonds. The additional amounts as testified to by me as heretofore was paid upon stock upon the books of the company.

Examination by Mr. WATTS:

Mr. Huckabee paid $2,166.00 on assessments. He has not paid fifty-seven per cent. I have never stated that Mr. McCally paid anything for bonds. I have stated that he has paid $5,000.00 for stock and nothing for bonds.

Examination continued by Mr. THORINGTON:

Mr. Huckabee executed a deed to this property. Mr. Huckabee was elected a director of this company, and acted in such
852 capacity from organization of the company to the present time, and was present at the meetings held by the directors when calls were made for assessments on stock, and voted for the calls, and afterwards paid assessments under those calls. In February, 1886, Mr. C. C. Huckabee paid $2,176.00 on his stock sub-

scription, and bonds were delivered to him at the same time. Mr. McCally was a director of the company, was elected at its organization and acted as such until July 6, 1882. There had been certain matters pending between the Brierfield Coal & Iron Co. and Mr. C. C. Huckabee, which were then in shape for settlement. Upon settlement being made it was found that said Brierfield Coal & Iron Co. was indebted to said Huckabee in the sum of $15,166.00. There was delivered said Huckabee as payment thereof thirteen bonds of the Brierfield Coal & Iron Co. and a receipt for $2,166.00 payment upon his subscription of $15,000.00 to the capital stock of said Co. This is the only payment that has ever been made on his stock. Mr. Huckabee never made any claim of a lien upon the property as I know. We never made any such claim to the agent of the trustee.

Examination by Mr. THORINGTON:

Q. State all you know in regard to sale of lots in Brierfield, when sale was made, who were the purchasers, by whom made, price, and on what terms.

A. In giving the information I will first give the resolution found on page 29 of the minutes of the company authorizing
853 the president of the company to convey certain property, and constituting the president, T. J. Peter, the secretary, E. T. Peter, and the treasurer, Jno. G. Murray, of the board of directors, an executive committee, with the power to fix the value of lots in the map of the town of Brierfield as laid off and platted by the Brierfield Coal & Iron Co., and authorizing the president and secretary to sell and convey said lots at such price as in their judgment it may be the best interests of the company so to do. On 13th day of April, 1887, the said Brierfield Coal & Iron Co. sold, conveyed, and delivered to F. F. Gage the following-described lots or parcels of land, to wit: Lots 1 to 15, both inclusive, in block 2; lots 1, 2, 3, 4, 6, 7, 9, 10, in block 24; the whole of block 25; lots 1, 2, 5, 6, 7, 8, 9, in block 3; lots 1, 2, 3, 4, 5, 6, in block 23; lots 1, 2, 3, 6, 7, 8, 9, 10, 11, & 12, in block 22, and lots 8, 9, 10, 11, 12, in block 18, making in all seventy-six lots, situated in section 30, township 24 north, range 12 east, and in the town of Brierfield, Bibb county, Alabama, so numbered on the map of the town of Brierfield as laid out and platted by the Brierfield Coal & Iron Co. The said sale and conveyance of the said property was made by authority of the board of directors of said company, duly had and given, and the conveyances were made by said company to said Gage on 13th day of April, 1887, and was executed by said company by and
854 through Thos. J. Peter, as and who was then its president, and attested by Edward T. Peter, as and who was then its secretary, and the execution of said deed was duly acknowledged by said company on 13th day of April, 1887, before S. R. Shepperd, who was then and there a justice of the peace for Bibb county, Alabama, and has been recorded in probate office of Bibb county, Ala. The assent and relinquishment of Preston B. Plumb, trustee, to said sale and conveyance was made and given in writing by him,

as is endorsed on said deed, on April 18th, 1887. Said deed was delivered to said F. F. Gage a short time after the said written consent of said trustee. He paid the said Brierfield Coal & Iron Co. the sum of $8,500.00 at the time of the delivery of said deed, this being the very amount of purchase-money agreed upon between the said Brierfield Coal & Iron Co. and said F. F. Gage. On 13th day of April, 1887, the Brierfield Coal & Iron Co. sold and conveyed to Chas. L. Bates, of Brierfield, Ala., the following lots or parcels of land in the town of Brierfield, in Bibb county, Ala., so numbered on the map of the town hereinabove alluded to, to wit: All of block number 21; lots 13 & 14, in block 18. The said company conveyed the said lots to the said Bates by deed bearing date April 13th, 1887, duly executed and acknowledged by the company. Preston B. Plumb, trustee, assented to said sale and conveyance and endorsed his assent in writing thereto on said deed on April 18th, 1887.

855 As soon as duly acknowledged the deed was recorded in the probate office of Bibb County, Ala. The purchase price of said lots was $600.00, and the same was paid to said company on the delivery of said deed to said Bates. In the month of April, 1887, T. J. Peter, president of the Brierfield Coal & Iron Co., and P. B. Plumb, trustee, agreed to make a deed to the Hemetite Club of Brierfield, Ala., to the following track or parcel of land, beginning at the intersection of the public road and west by Mahan's creek, in the N. E. quarter of the S. W. quarter of section 19, township 24, range 12 east, and bounded as follows: On the east by the creek aforesaid, on the south by the public road, on the west by the right of way of the mine road, and on the north by a line parral-el to the public road, and intersecting the right of way of the mine road at a point two hundred feet north of the intersection of the public road with said mine railroad. The said Hemetite Club, upon assurances before given by said Peter and Plumb, trustee, erected a building on said tract of land, but have never received any deed for said land. The consideration for which said deed was to be delivered to said Hemetite Club to said tract of land was that a building should be erected upon the land, to be used for the purpose of a public reading-room and a general place of amusement and recreation for the members of the club. The members of the club are com-

856 posed of the employees of the Brierfield Coal & Iron Co. All the conditions have been fully complied with; the buildings have been built and used for the purposes designated, and are now being used for these purposes. Under the organization and by-laws of the Hemetite Club any fit person can become a member of the same and enjoy all its privileges and immunities. The lot at the time it was given to the Hemetite Club was worth about $200.00, and said Hemetite Club have erected a very sightly building thereon, and making other permanent improvements which have added greatly to the surrounding property, costing about $1,000.00. The erecting of this building and the improvements to this tract of land have made the town of Brierfield more attractive as a place of residence. On April 26th, 1887, the Brierfield Coal & Iron Co. sold and conveyed to Mrs. Lucy South, of Brierfield, Ala., lots numbered 10

& 11, in block 3, of the map of the town of Brierfield as laid out and platted by said Brierfield Coal & Iron Co., and the conveyance of same by said company to said Mrs. Lucy South on 26th day of April, 1887, and was executed by said company. The purchase price agreed upon between the said company and the said Mrs. Lucy South was $300.00; was paid in cash by said Mrs. Lucy South to the Brierfield Coal & Iron Co. The Brierfield Coal &
857 Iron Co. sold and conveyed to the Methodist Episcopal church of Brierfield, Ala., lots numbered 3 & 4, in block 3, of the map of the town of Brierfield, Ala., as laid out and platted by the Brierfield Coal & Iron Co., in consideration of $2.00, which was paid in cash to the company, and the further consideration that a sightly church building should be erected on said lots within one year. This church building was erected within six months from the delivery of the deed. The Brierfield Coal & Iron Co. sold and conveyed to the Baptist church of Brierfield, Ala., lots numbered 4 & 5, in block number 22, of the map of the town of Brierfield as laid out and platted by the Brierfield Coal & Iron Co., for the consideration of $2.00, which was paid to the company, and the further consideration that a sightly church building should be erected on said lots within one year from the date of said deed. The church building was erected on these lots within six months from the date of the deed. The Brierfield Coal & Iron Co. sold and conveyed to J. G. Nolan lot number 5, in block 24, of the map of the town of Brierfield, Ala., as laid out and platted by the Brierfield Coal & Iron Co., for the consideration of $57.00, which was purchase price agreed upon between the Brierfield Coal & Iron Co. and said Nolan. The Brierfield Coal & Iron Co. sold and conveyed to Elizabeth Gage lot number 8, in block 24, of the map of the town of Brierfield as laid out and platted by the
858 Brierfield Coal & Iron Co., in consideration of the sum of $66.00, purchase-money agreed upon between *between* the Brierfield Coal & Iron Co. and said Elizabeth Gage. The Brierfield Coal & Iron Co. sold and conveyed to the Roman Catholic church of Brierfield, Ala., block 100, of the map of the town of Brierfield as laid out and platted by the Brierfield Coal & Iron Co. in consideration of the sum of $1.00, which was paid to the company, and the further consideration that a sightly church building should be erected on said block within one year from the date of the delivery of the deed. The church building was erected within six months from the date of the delivery of the deed. The trustee relinquished on the church lots, but did not relinquish any of the other lots except as hereinabove stated. The trustee was present at the meeting of the directors held April 12, 1887, when the officers of the company were authorized to sell and execute deeds to lots of the company, and agreed to relinquish all lots thus sold. The Brierfield Coal & Iron Co. sold a small strip of land west of the 20th lot, in block 22, of the map of the town of Brierfield as laid out and platted by the Brierfield Coal & Iron Co., in consideration of the sum of $100.00, which *as* the contract price agreed upon between the Brierfield Coal &

Iron Co. and Thos. S. Alvis. The purchase-money was paid
859 to said Brierfield Coal & Iron Company by said Thos. S. Alvis. The company nor the trustee have never sold any of the lands covered by the deed of trust so far as I know.

Q. What real property covered by the deed of trust and subject to the lien of the bondholders is now in possession or control of the trustee?

A. All of the real property described in the deed of further assurance, dated July 29, 1887, made by the Brierfield Coal & Iron Co. to P. B. Plumb, trustee, except that heretofore described by me as having been sold to other parties, is now in possession and control of the trustee. To the best of my knowledge this deed of further assurance contains a correct description of the property owned by the Brierfield Coal & Iron Co.

Q. State what personal property included in the deed of trust is now in possession or control of the trustee subject to the claim of bondholders.

A. The personal property now in possession or control of the trustee is the same as described in the deed of further assurance before aliuded to, with the exception of four mules, which have been bought by the trustee, one Ingersoll air compressor, with two rock drills, and one Blake steam-pump and fittings, which have been purchased by the trustee.

JOHN G. MURRAY.

In the Circuit Court of the United States for the Middle District of Alabama.

860 WILLIAM L. CHAMBERS, Trustee, } In Equity. No. 103.
vs.
THE BRIERFIELD COAL AND IRON CO. & Others.

THURSDAY, *September* 27, 1888.

Proceedings on reference resumed pursuant to adjournment.

Present: William S. Thorington, Esq., representing compl't; E. W. Pettus, Esq., representing the City National Bank of Selma, the Commercial Bank of Selma, Esther A. Peter, and others, for whom he filed answers in the cause.

The accounts and vouchers of Preston B. Plumb, as trustee, were then presented and filed; also accounts and vouchers of Wm. L. Chambers, as trustee, were presented and filed.

JOHN G. MURRAY, witness heretofore sworn in this cause on behalf of complainant, being further examined, testifies as follows:

Examination by Mr. THORINGTON:

Q. Are you familiar, Mr. Murray, with the accounts and vouchers of Plumb and Chambers filed of this date?

A. Yes, sir.

Q. State whether or not these accounts are full and correct.

A. Yes; they are full and correct.

Q. Did you have anything to do, Mr. Murray, with receiving
861 the money represented by these accounts and paying it out?

A. Yes; I received it all and paid it all out, except probably during a week in my absence, when the receipts and disbursements were attended to by Mr. Peter.

Q. How often were you absent?

A. Not more than three weeks altogether.

Q. Did you have any personal knowledge of the receipts and disbursements made during your absence?

A. Yes; everything taken in and paid out during my absence was placed on a memorandum and referred to me upon my return. All these moneys were receipted for and disbursed in my name as agent for the trustee.

Q. Who kept the books from which these accounts were taken?

A. I did, and had full and complete knowledge of every entry on the books.

Q. Were these vouchers all signed by the parties by whom they purport to have been signed?

A. Yes, sir.

Q. And on account of the payments for which they purport to have been given?

A. Yes, sir; some of these vouchers, instead of the signature of the party in whose favor they were made, have attached the sight draft paid for the full amount of the voucher. Our pay-roll vouchers were all receipted for by the employés making their mark on the margin of the pay-roll, which signature thus made was witnessed at the times by J. B. Jemison, clerk in my office.

862 Q. His signature as such witness on these pay-rolls is genuine?

A. Yes, sir.

Q. These accounts, then, cover all moneys that were received and all moneys that were paid out during the time they purport to cover?

A. Yes, sir; they cover all the moneys received and paid out by me during the time they purport to cover.

Cross-examination by Gen. Pettus:

Q. How much money, Mr. Murray, was received on trustee's certificates during Mr. Plumb's trusteeship by you as his agent?

A. $11,567.12, which was par for all certificates sold by said Plumb as trustee. Mr. Plumb turned over all the other certificates which he had to his succeeding trustee, and they were all destroyed except two (2), and those two were sold by Mr. Chambers, the succeeding trustee, and are accounted for in the general account filed by Chambers this day.

Q. Mr. Murray, so far as the money came into your hands, how many receiver's certificates and for what amount were sold by Mr. Chambers, trustee?

A. The amount is $21,495.69. I don't know the number of certificates.

Q. You don't know of your own knowledge what other certificates were sold by Mr. Chambers?

A. I do not.

Q. If others were sold by Mr. Chambers they are not accounted for in the accounts filed to-day?

A. No, sir.

Q. The accounts filed to-day contain a statement of all the
863 transactions of both trustees of which you have personal knowledge?

A. Yes, sir; all original vouchers for moneys paid from sale of trustee's certificates, as shown in my general account, under the trusteeship of Mr. Chambers are in the hands of Mr. Chambers, these vouchers being attached to the drafts made upon him in payment therefor.

The Alabama National Bank of Birmingham, Alabama, presents before the master nine (9) bonds of one thousand dollars each, numbered 244, 285, 243, 384, 383, 242, 241, 381, and 382 = $9,000.00, with 4 past-due coupons attached to each of said bonds, making 36 coupons in all, namely:

9	coupons	dated	Oct., 1886,	$30	each	270 00
9	"	"	Apr., 1887,	"	"	270 00
9	"	"	Oct., 1887,	"	"	270 00
9	"	"	Apr., 1888,	"	"	270 00
*9	"	"	Oct., 1888,	"	"	270 00

On motion of Gen. E. W. Pettus the reference was adjourned over to the 5th day of October, 1888, at 10 o'clock a. m.

FRIDAY, *October* 5, 1888.

By agreement of counsel the reference is adjourned until Monday, the 15th day of October, A. D. 1888, at ten o'clock a. m.

In the Circuit Court of the United States for the Middle District of Alabama.

WILLIAM L. CHAMBERS, Trustee,
vs.
THE BRIERFIELD COAL AND IRON CO. & Others. } In Equity. No. 103.

864 MONDAY, *October* 15, 1888.

Proceedings on reference resumed pursuant to adjournment.

Present: William S. Thorington, Esq., representing complainant; Thomas H. Watts, Jr., representing C. C. Huckabee & R. L. McCalley.

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*In pencil.

JOHN G. MURRAY, witness heretofore sworn in this cause on behalf of complainant, being recalled, testifies as follows:

Examination by Mr. THORINGTON:

Q. Mr. Murray, has the debt heretofore testified about in favor of the Commercial Bank of Selma assumed any different shape since you last testified? If so, state how, and give all the facts. I refer to the debt evidenced by two notes made by the Brierfield Coal and Iron Company for $2,500 each, one made in March 10, 1887, and the other March 18, 1887, both payable to John G. Murray and endorsed by him and by T. J. Peter.

A. (The witness here produces the two notes specified above, and states as follows:) When I last testified in regard to this debt, it had been paid by me personally to the Commercial Bank of Selma. Since that time Mr. Thomas J. Peter has paid me the debt in full, with interest as follows: On the note dated March 10, 1887, interest to this date, $223.76; on the note dated March 18, 1887, interest to this date, $218.32, and these notes I now file with the master—

Answer & question both withdrawn.

865

Stricken out on motion of counsel for Maj. Peter.

for consideration as to whether they can be properly credited on Mr. Peter's subscription to the capital stock of the Brierfield Coal and Iron Company.

Q. What became of the securities that were put up with the notes?

A. They were assigned to Mr. Peter, as evidenced on the back of the notes, by me.

Examination by Mr. WATTS, representing C. C. Huckabee and R. L. McCalley:

Q. Mr. Murray, is that the paper referred to by you in your former testimony as the statement of account rendered by you to Mr. Huckabee at the time of delivering to you the bonds for $15,000.00? (Hands witness a paper marked Exhibit # 11 by the master.)

A. Yes, sir.

Q. Is this the paper of which you testified that Mr. Huckabee paid $2,116.00 on account of stock? (Hands witness another paper, marked Exhibit No. 12 by the master.)

A. Yes, sir.

Q. How much of the stock assessments were paid by the stockholders in coupons or bonds?

A. The proper way to ascertain that will be to make an estimate of all coupons now unpaid and deduct these from the whole amount of coupons originally attached to the bonds at the date of delivery of said bonds to the party purchasing.

Q. Then all coupons paid were paid on stock?

A. Yes, sir.

866 Q. Can you state how much each paid?

A. No, sir; not without reference to the books; that can also be ascertained by reference to the bonds.

Q. Now, were all the stock assessments of each stockholder paid in coupons?

A. No, sir; nor all the stock assessments of any of the stockholders except Col. Huckabee. That portion of the assessment paid by him was paid entirely in coupons.

Q. Well, were all the stock assessments which were paid by the different stockholders paid in coupons?

A. No, sir.

Q. You can't state, then, what each paid in coupons.

A. No, sir; I can't state that without reference to the books.

By Mr. THORINGTON:

Q. State, Mr. Murray, whether or not you had any conversation with Mr. Huckabee at the time the papers now shown you were handed to him in regard to his bonds and stock; and, if so, state fully what that conversation was.

A. Yes, sir; we had a conversation in regard to the bonds and stock. Before delivering the bonds to Col. Huckabee I stated to him that there had been several assessments made upon the stock subscriptions, as he was aware, and that before delivering to him the bonds it would be necessary for him to pay such assessments

867 as other subscribers to the capital stock had paid. He replied that he was not in shape financially to pay the assessment, which amounted to 57 per cent. at that time, upon the whole amount of stock for which he had subscribed, but that if it was satisfactory to me he would reduce his stock subscription and let the amount at that time due him in coupons represent 57 per cent. of the amount to which he would reduce the stock subscription, and would pay this 57 % by the surrender of these then due coupons.

This he did, and I delivered to him the bonds due him and a receipt for $2,166.00 as a payment of 57% upon 38 shares of capital stock of the Brierfield Coal and Iron Co. Mr. Huckabee accepted this receipt as a part payment upon an assessment of 77 %, as the receipt will show, and agreed to pay the remaining 20 % within a very short time.

Q. When did you first learn that Mr. Huckabee repudiated that contract?

A. Here, when I gave in my first testimony, on the 25th of July, 1888. Col. Huckabee orally requested me, at my office in Brierfield, to deliver to him a stock certificate for the amount of the assessment which he had thus paid. This I refused to do until he had paid the balance of assessment which had been made and payment of which had been promised by him. He then again promised to pay

868 the balance of the assessment, and said he recognized the justness of my position.

Q. I will ask you now if you have a letter from Col. Huckabee relating to this subject?

(Objected to by Mr. Watts, on the ground that it asks for the contents of the letter & the letter itself is the best evidence.)

Q. Will you produce that letter at the next hearing on this reference?

A. Yes, sir. I would state that Thomas J. Peter was present at the first interview between Col. Huckabee & me.

Q. Had you ever heard until this suit that Mr. Huckabee claimed a vendor's lien on the land?

A. No, sir.

Q. Do you know if he has ever made any such claim as that to the company?

A. No, sir.

Q. Since this transaction between you and Mr. Huckabee in regard to the bonds and stock of Mr. Huckabee, has he or not attended any of the meetings of the directors?

A. Yes, sir. I would state that Col. Huckabee was present as a director at at least 2 of the meetings held since the transaction between him and me, about which I have just testified, and participated in the proceedings of those meetings as a director. Col. Huckabee was present at a meeting of the directors in which they authorized the president of the company, with the consent of the trustee, to execute deeds to any parts of the property that in their judgment it might be expedient to sell, voted affirmatively, and made no
869 claims of having any vendor's lien upon any portion of the property.

(Mr. Watts moved to exclude that part of the answer which states what was done at these directors' meetings, or how Col. Huckabee voted—the records being the best evidence. The master sustained the motion, and complainant has leave to introduce the records when he can procure them.

By Mr. WATTS:

Q. When was it in your office that Col. Huckabee orally requested you to deliver the stock certificate?

A. I don't remember the exact date. I should say about 6 months after we made the settlement in regard to the bonds.

Q. Were both of those papers given on the same day?

A. I don't think they were.

Q. Which paper was sent to him?

A. I think the statement of account.

Q. Was the account sent to him before or after?

A. I think it was sent before.

Q. Your recollection is that you gave him the statement of account before this settlement?

A. I am not positive about that.

Q. Is your best recollection that he brought the statement of account with him?

A. I state that he might have done it.

Q. I notice the last item in this account is Dec. 31, 1885, and the

account dated Dec. 31, 1886. Is that 86 there a mistake and was it intended for 85?

A. I think it was intended for 86.

870 By Col. THORINGTON:

Q. I observe, Mr. Murray, that Exhibit No. 12 is dated Dec. 19, 1886, on which day you have testified that the settlement between you and Mr. Huckabee occurred, while the paper, Exhibit No. 11, which contains the account of Mr. Huckabee and which entered into that settlement is dated Dec. 31, 1886. Please state whether or not both of these papers were before Mr. Huckabee and yourself at the time the settlement occurred.

A. Yes, sir; they were.

Q. Mr. Muckabee then was informed, was he, of the contents of the paper market Exhibit No. 11 at the time that the stock & bonds' settlement occurred?

A. Yes, sir.

Q. And the statement contained in Exhibit No. 11 entered into and formed part of that settlement, did it?

A. Yes, sir.

Q. Was Mr. R. L. McCalley present at that settlement between you and Mr. Huckabee?

A. No, sir.

Q. Did Mr. McCalley have any stock or bonds other than those received from Mr. Huckabee?

A. No, sir.

Q. Statement Exhibit No. 11 appears to be made out against C. C. Huckabee and R. L. McCalley. On the settlement you had was the entire amount charged against Mr. Huckabee?

A. It was, and he assented to it.

JOHN G. MURRAY.

Twenty-seven bonds of one thousand dollars each were then presented and filed in the name of Samuel Thomas. Attached
871 to each of said bonds are four (4) coupons, $30 each, past due and unpaid. Said bonds were presented by the Chase National Bank of New York, and by consent of the parties said bonds were returned to Samuel Thomas for safe keeping. The bonds as follows: 252, 251, 130, 131, 132, 133, 134, 135, 129, 128, 138, 137, 136, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279.

One hundred bonds (100) of one thousand dollars each were then presented for and filed in the name of Thomas S. Krutz, of Emporia, Kansas, numbered as follows: 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 253, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 309, 310, 311, 312, 489, 490, 491, 492, 493, 494.

100 coupons, past due, payable Oct. 1st, 1887.
100 " " Apr. 1, 1888.
100 " " Oct. 1, 1888.
33 coupons, past due, payable Apr. 1, 1886.
33 " " Oct. 1, 1886.
33 " " April 1, 1887.
1 " " " " 1888.
31 " " " " 1886.
31 " " Oct. 1, 1886.
872 31 coupons, past due, payable Apr. 1, 1887.
7 " " " " 1888.
33 coupons, past due, payable Apr. 1, 1886.
33 " " Oct. " 1886.
33 " " Apr. " 1887.
1 " " Oct. " 1887.
48 " " Apr. " 1885.
48 " " Oct. " 1885.
2 " " Apr. " 1886.
2 " " Oct. " 1886.
2 " " Apr. " 1887.
50 " " Apr. " 1885.
50 " " Oct. " 1885.
8 " " Oct. " 1887.
1 " " Apr. " 1888.
9 " " Oct. " 1888.

Three (3) bonds were then presented for and filed in the name of Calvin S. Brice, numbered as follows: 280, 281, and 282, with one past due coupon payable Oct. 1, 1888, attached to each of said bonds. Forty (40) bonds were then presented for and filed in the name of George I. Seney, numbered as follows: 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 139, 140, 141, 142, 143, 144, 145, with—

40 coupons attached, due Apr. 1st, 1887.
40 " " " Oct. " 1887.
40 " " " Apr. " 1888.
40 " " " Oct. " 1888.

873 On motion of complainant's solicitor, it is ordered that any of the parties to this cause may file written objections to the bonds filed this day by Thos. S. Krutz, Samuel Thomas, Calvin S. Brice, and George I. Seney, said objections to be filed by the 27th inst.; and said parties have leave to withdraw the bonds so filed by them for safe-keeping, subject to any objections that may be filed.

The reference was then adjourned until Saturday, Oct. 27, 1888, at 10 o'clock a. m.

In the Circuit Court of the United States for the Middle District of Alabama.

WILLIAM L. CHAMBERS, Trustee,
vs.
THE BRIERFILD COAL & IRON CO. & Others. } In Equity. No. 103.

SATURDAY, *October* 27, 1888.

Proceedings on reference resumed, pursuant to adjournment.

Present: William S. Thorington, Esq., representing compl't; E. W. Pettus, Esq., representing the City National Bank of Selma, the Commercial Bank of Selma, Esther A. Peter, and others, for whom he filed answers in the cause; P. C. Massie, Esq., representing The Brierfield Coal & Iron Co.; and Thos. H. Watts, Jr., representing C. C. Huckabee and R. L. McCalley.

JOHN G. MURRAY, witness heretofore sworn and examined
874 in this cause, was recalled and examined further by Thos.. J. Peter, and testified as follows:

Question by Mr. MASSIE: Mr. Murray, you testified heretofore as to the indebtedness of the Brierfield Coal & Iron Co. to the Ala. Nat. Bank by notes on which Maj. Peter was the endorser, you remember. Do you know whether those notes have ever been paid?

A. Yes, sir; they have been paid.

Q. When were they paid and what amount was paid by Maj. Peter?

A. They were paid on Oct. 17, the amount of principal and interest being $8,704.85.

Q. That is the full amount due the Ala. National Bank?

A. Yes, sir; these are the notes about which I have testified on a former occasion and on which Mr. Peter was security.

Q. Mr. Murray, you also testified on a former occasion as to the indebtedness of the Brierfield Coal & Iron Co. to the Commercial Bank of Selma, which indebtedness was evidenced by several notes on which Maj. Peter was endorser. State whether or not Maj. Peter has ever paid those notes.

A. Yes, sir; he has.

Q. State when he paid them and what am't, principal and interest.

A. As I testified here on my previous examination, $5,000.00 of this indebtedness, upon which Mr. Peter & myself were endorsers,
was paid, as then testified to by me. Mr. Peter, on Oct. 20,
875 also paid in full the balance of the indebtedness of the Brierfield Coal & Iron Co. to the Commercial Bank of Selma. amounting to $24,265.68, principal and interest.

The receipt of the Commercial Bank of Selma to T. J. Peter, dated Oct. 20, 1888, for $24,265.68, was offered in evidence, filed by the master & marked Exhibit # 13.

There was also offered in evidence receipt signed by the Ala. Nat.

Bank of Bhm., Ala., for $8,704.85, dated Oct. 17, 1888, directed to the master, filed and marked Exhibit No. 14.

These payments were made in pursuance of a resolution of the board of directors of the Brierfield Coal and Iron Co. heretofore shown, by which Maj. Peter was to be allowed credit on his unpaid stock subscription for these amounts, provided he paid them.

There were then presented for and filed in the name of Justin S. Morrill 11 coupons, past due and payable on the 1st day of April, 1887, for $30 each, taken from bonds 112 to 122, inclusive; 11 coupons payable Oct., '87, for $30.00 each, taken from bonds 112 to 122, inclusive.

By Gen. PETTUS:

Q. Mr. Murray, please describe*d* to the master the 495 coupons which were paid to the Brierfield Coal and Iron Co. on account of Mrs. Plumb's stock subscription, as stated by you in your former testimony.

A. They were all the coupons due and unpaid on the 99
876 bonds owned by Mrs. C. S. Plumb, up to and including the coupons maturing April 1, 1887.

Q. From what bonds were they taken?

A. They were cut from bonds that I have heretofore described as being the 99 bonds owned by Mrs. C. S. Plumb.

Q. Mr. Murray, please state to the master what bonds which were owned and held formerly by Mrs. Carrie S. Plumb are registered bonds; give the numbers of the bonds which were purchased by Mrs. Plumb which now stand registered on the books of the company in her name.

A. There are 32 of these bonds registered in the name of Mrs. Plumb on the books of the company as follows: 284 to 305, inclusive; 309 to 312, inclusive; 489 to 494, inclusive.

Q. Which bonds belong*ed* to Calvin S. Brice are registered?

A. There are 3 belonging to Calvin Brice that now stand registered on the books of the company in the name of A. O. Beebe, numbered 280, 281, and 282.

Q. What bonds belonging to Samuel Thomas are registered on the books of the company?

A. There are 27 bonds belonging to Samuel Thomas, which now stand registered on the books of the company in the name of A. O. Beebe, numbered from 128 to 138, inclusive, 251 & 252, 266 to 279, inclusive.

Q. What bonds owned by George I. Seney stand registered on the books of the company?

A. All the bonds, being 40, owned by Geo. I. Seney stand
877 registered on the books of the company. The numbers are set forth in my former testimony.

Q. What bonds owned by Justin S. Morrill are registered on the books of the company?

A. There are 5 bonds owned by Justin S. Morrill registered on

the books of the company in his name, and numbered from 118 to 122, inclusive.

By Col THORINGTON:

Q. Please state the dates of the meetings at which calls or assessments were made on stock.

A. The first call was made July 9, 1884.

Q. On what page of the director's book of proceedings does that appear?

A. On page 26; reads as follows:

Office of Brierfield Coal & Iron Co.

BRIERFIELD, ALA., *July* 9, 1884.

A meeting of the directors of this company was held here to-day, pursuant to the call of the president. There were present C. C. Huckabee, Thomas J. Peter, and John G. Murray.

The following motion was made, seconded, and unanimously carried:

Resolved, That an assessment of 20% on the stock of the company be levied, payable at the office of the company in Brierfield, as follows: 10% payable Aug. 1, 1884; 5% payable Oct. 1, 1884; 2% payable Jan. 1, 1885, and 3% payable Apr. 1, 1885. The board then adjourned, to meet at the call of the president.

(Signed) T. J. PETER, *Pres't.*

JNO. G. MURRAY, *Sec'y.*

878 Q. State the next meeting at which a call was made.

A. April 20, 1885.

Q. Who was present at that meeting as shown by the record?

A. C. C. Huckabee, Thos. G. Peter, and Jno. G. Murray.

Q. What was the am't of the call or assessment?

A. Seven per cent.

Q. Were these 2 meetings about which you have just testified held prior to the time of the settlement between you and Mr. Huckabee of the Brierfield matter spoken of by you on the last examination?

A. Yes, sir.

Q. Was there any call or assessment made on stock after that settlement?

A. Yes, sir; Jan. 1, 1886.

Q. Who was present at that meeting?

A. C. C. Huckabee, Thos. J. Peter, & Jno. G. Murray.

Q. What was the amount of the call?

A. Thirty per cent.

Q. You spoke on the last examination about an account against Mr. Huckabee in favor of the company and which was the basis of the settlement between the company & him. Look at the paper handed you and state whether the account you have and Mr. Huckabee then had, and on the basis of which the settlement was made, was made up from the paper now handed you.

(Hands witness a paper—statement of account between C. C. Huckabee and the Brierfield Coal & Iron Company—identified by the master & marked Exhibit No. 15.)

879 A. Yes, sir; it was.

Q. Do you recollect what you stated was the date of that account on the last examination?

A. I stated that I thought it was Dec., 1886.

Q. What do you say now?

A. I say it was December, 1885.

Q. Mr. Murray, on that settlement between you, acting for the Brierfield Coal & Iron Co., and Mr. Huckabee, did he make any objection to the account because it was against him and McCalley, jointly?

A. No, sir.

Q. Did he agree to the account in that form?

A. Yes, sir.

Q. State what the papers are just handed you, Mr. Murray. (Hands witness papers.)

A. These are orders from Mr. Huckabee from which that account was made up.

Q. Are you familiar with Mr. Huckabee's handwriting?

A. Yes, sir.

Q. Are the orders included in those papers signed by Mr. Huckabee?

A. Yes, sir.

Q. And were they paid by the company for the amount for which they purport to have been and at the time they purport to have been paid?

A. All the amounts paid on these orders were paid by the company for the purposes designated in said orders.

Q. Now, look at the papers that are not in the form of orders and state what they are (hands papers).

A. These are statements of accounts against C. C. Huckabee
880 and R. L. McCalley. These statements were all submitted to C. C. Huckabee at the time of the settlement and allowed by him and entered into and formed part of that settlement with his full knowledge and consent.

(The papers are filed by the master, marked Exhibit No. 16.)

Q. Did you receive a letter from Mr. Huckabee as to the settlement, about which you have just testified?

A. Yes, sir.

Q. Look at this paper (hands paper). Is that a letter from Mr. Huckabee?

A. Yes, sir.

Q. In his handwriting?

A. Yes, sir.

Q. Received by you?

A. Yes, sir.

(Letter identified by the master, marked Exhibit 17.)

Mr. WATTS:

Q. Mr. Murray, is letter Exhibit 17 the letter which you referred to in your last examination as having been from Col. Huckabee?

A. No, sir.

Q. Where is that letter?

A. Couldn't find it.

Q. How do you account for the fact that the statement which you now produce as Exhibit 15 was dated 12 Dec., 1885, when the statement Exhibit 11, of which you say Exhibit 15 is the original one, should be dated Dec. 12, '86?

A. Simply a clerical error in writing 1886 instead of 1885.

Q. Then this letter Exhibit 17 was written more than a year after Exhibit 11 was made out?

A. About a year.

Q. Were any bonds ever assigned to Mr. McCalley?

A. Not to my knowledge.

881 Q. Have any been entered on the books of the company?

A. No, sir.

Q. State why no bonds were assigned or delivered to Mr. McCalley.

A. I never assigned or delivered bonds unless upon receipt of 90% of the par value in cash; having received nothing from Mr. McCalley for bonds I couldn't assign or deliver them.

Q. You had received $5,000.00 in money from the company?

A. There had been a credit of $5,000.00 to Mr. Calley from the purchase of property.

Q. Did you ever issue any stock to Mr. McCalley?

A. No, sir.

Q. So he got neither stock nor bonds?

A. No, sir; never any issued to him.

Q. Ever pay him the $5,000.00?

A. No, sir.

By Col. THORINGTON:

Q. Did Mr. McCalley ever call on you for the $5,000.00?

A. No, sir.

Q. Did he ever make any claim that he had any lien on the property?

A. No, sir.

Q. Did he ever make any demand for the stock?

A. No, sir; not to my knowledge.

Q. Who would have been the proper person to call upon for the certificate of stock if he had any?

A. I don't know who *who* would have been the proper person, but it was customary for all the other stockholders to call upon the secretary.

Q. Who was the secretary?

882 A. I was the secretary until the date I resigned, which is given in my former testimony.

Q. About what date was that?

A. December 15, 1886.

Q. He had made no demand on you for stock up to that time?
A. No, sir.

By Mr. WATTS:

Q. He made demand on the company for the bonds?
A. No, sir; not to my knowledge.
Q. Did he make it to Mr. Peter?
A. No, sir; not in my hearing, if he did.

Complainant offers in evidence the proceedings of the directors' meeting of April 12, 1887, on page 29 of the book of proceedings of the directors' meeting.
(Insert copy of proceedings page 29.)

By Col. THORINGTON:

Q. Now state, Mr. Murray, whether or not any of the property authorized at that meeting of the directors to be sold was a portion of the property that was purchased by the company from Col. Huckabee?
A. Yes, sir; all the lots mentioned in the proceedings of that meeting are a portion of the property purchased by the company from Col. Huckabee.

Mr. MURRAY recalled.

By Gen. PETTUS:

Q. Mr. Murray, you have produced here an account of the working of the furnace during the months of Aug. & Sept. Are those accounts correct?
A. They are, sir.
Q. They show the amounts taken in and the amounts paid out by you as agent for the trustee during those months?
A. Yes, sir.
883 Q. You know nothing about the trustees' business except so far as it passed through your hands?
A. Yes, sir.

By Col. THORINGTON:

Q. Mr. Murray, the accounts for the practical operation of the company are all in your charge and kept by you?
A. Yes, sir.
Q. Here is another paper. What is that? (Hands witness paper.)
A. It is a statement showing amount due different parties for merchandise and labor up to Sept. 29, '88, and also showing amounts paid upon this indebtedness to date.
Q. Is that a correct statement?
A. Yes, sir.

By Gen. PETTUS:

Q. What is this paper? (Hands witness another paper.)

A. This is a statement showing amounts due from different parties.

Q. Is that report a correct statement?

A. Yes, sir; it is.

Col. THORINGTON:

Q. Were these vouchers signed by the parties by whom they purport to have been signed, and were the amounts actually paid which purport to have been paid and at the times they purport to have been paid and for the consideration stated in the vouchers?

A. Yes, sir.

Q. What is this? (Another paper.)

A. Statement of moneys borrowed by W. L. Chambers, trustee, from Sam'l Hooker.

Q. Is that money that was borrowed under order of the court?

A. Yes, sir; that is my understanding.

Q. State, Mr. Murray, when that money was borrowed.

A. The money was borrowed on the dates and in the
884 amounts given in the statement.

Q. How was the money used?

A. Used in carrying on the business of the trustee. Most of it was applied to paying off the employés and the other in general operation of the business.

Q. For $5,000.00 of this I see that 2 notes were given for $2,500.00 each. When were those payable?

A. My recollection is that they were 6-months' notes from their date.

Q. When were these amounts which appear on the statement of open accounts payable?

A. There was no specified time. The money was to be refunded to Mr. Hooker as soon as possible.

Q. Was there any agreement as to the rate of interest to be paid for this money?

A. Yes, sir; Alabama interest.

Q. Has any portion of it been repaid?

A. No, sir.

Q. Has there been any of the coupons on the trustee certificates paid by you as agent for the trustee?

A. Yes, sir. They appear in the accounts so far as I have paid them.

Motion is made on the part of the complainant that the master forthwith recall all bonds and coupons heretofore filed and that have been withdrawn, with his permission, for the purpose of safe keeping, in order that said bonds and coupons may remain on file as part of the record in this cause.

885 In the Circuit Court of the United States for the Middle District of Alabama.

WM. L. CHAMBERS
vs.
THE BRIERFIELD COAL & IRON COMPANY *et als.*

MONDAY, *November* 26, 1888.

Proceedings on reference resumed pursuant to adjournment.

Present: Thorington & Smith, representing complainant; Marks & Massy, representing the defendant.

JOHN G. MURRAY, being recalled, testified as follows:

Examination by Mr. THORINGTON:

Q. Look at this paper, Mr. Murray, and state what it is.

A. It is the account of W. L. Chambers, trustee, showing the receipts and disbursements from December 1st, 1887, to December 30th, 1887.

Q. That then, Mr. Murray, is a recasting of the accounts heretofore filed by the trustee, are they?

A. Yes, sir.

Q. Then that account which you now hold shows all the receipts and all the disbursements on account of this trusteeship from the dates which it purports to cover?

A. Yes, sir.

(Account filed and identified by the master as "Exhibit A.")

Q. Is this account based on the same items which were filed in support of the previous accounts filed by the trustee?

A. Yes, sir; but there have been some changes made in the form of the accounts. For instance, our store furnishes goods to the different departments, the store receiving credit for these goods through our cash book, and the department being charged with such goods in the cash book at the time credit is given the store. Formerly there were no vouchers filed covering these items. In order that this might appear in these accounts we have now brought in vouchers showing in detail every item furnished by the store in this manner to the different departments, which vouchers are receipted by the storekeeper. I would say that this neither
886 adds to nor detracts from the amount or the nature of the account, as heretofore rendered. It is simply putting in voucher form, bearing the receipt of the storekeeper, accounts for which we formerly had mere transcripts of the cash book.

Q. With the exception of these vouchers, which you have just mentioned, this account filed to-day is supported by the same vouchers as were filed with the former accounts of the trustee?

A. Yes, sir.

Q. The account just filed shows more specifically than the former accounts all amounts received and the different items of credit which were embraced in the former accounts?

A. Yes, sir; and no more.

Q. The result as shown by the two accounts is the same?

A. Just the same, exactly.

Q. Mr. Murray, will you state what works of the company were in operation at the time Mr. Chambers was appointed trustee?

A. Coal mines.

Q. How many?

A. Two, and coke ovens.

Q. How many ovens?

A. 62 ovens, one blast furnace, ore banks, and railroads.

Q. What was the capacity of the furnace?

A. About 30 tons a day.

Q. Have these works been in operation since that time?

A. Yes.

Q. About how many employees have there been there, Mr. Murray?

A. I should say between 300 and 400, making an estimate.

Q. The works are still in operation?

A. Yes, sir.

Q. This account filed shows the product of the works & the results of it?

A. Yes, sir.

Q. Look at this paper, Mr. Murray, and state what this is.

A. This is an itemized statement of receipts and disbursements of P. B. Plumb, trustee, from August 3, 1887, to Nov'r 30th, 1887.

887 Q. Does this account show all the monies received and all the monies paid out by Mr. Plumb as trustee?

A. Yes, sir.

Q. What is the difference between this account, if any, and the account formerly filed by Mr. Plumb?

A. No difference, with the exception of putting in voucher form the store accounts heretofore referred to in my testimony to-day, under his administration, and the enumerating in the voucher sheet the interest and exchange paid by P. B. Plumb, trustee, to banks during his administration.

Q. The account filed to-day then is based on the same items set forth in the former accounts, and stated more specifically in this account?

A. Yes, sir; that is all; there is no difference in dollars and cents or in the nature of the account.

Q. The vouchers supporting this account are the same as those filed with the other account?

A. Yes, sir; with the exception that I noted.

Q. And those vouchers you have already proved?

A. Yes, sir. I would say in regard to the money paid to Memphis National Bank in this account of Oct. 30th, 1887, being last item in the account to the am't of $7,200 was paid upon the indebtedness of the Brierfield Coal & Iron Company to said Memphis National Bank, amounting to $12,200, and was all received from the proceeds of the sale of nails held as collateral security by said bank for this

debt. None of it was received from the sale of any products other than these nails.

Q. Had these nails been pledged with the bank for the payment of this debt before Mr. Plumb's appointment?

A. Yes, sir; it was shown in the original bill filed by P. B. Plumb, trustee.

Q. All the amounts shown by this account to have been paid out were actually paid for the purposes stated in the account, and
888 the vouchers were given by the parties and for the consideration for which they purported to have been given?

A. Yes.

Q. That is true as to Mr. Chambers' account?

A. Yes, sir; to both the Chambers and Plumb account.

Q. State what this paper is.

A. This is a statement of the account of W. L. Chambers, trustee, showing the receipts and disbursements for the month of October, 1888, and is accompanied by the vouchers paid during last month. (Paper identified by the master and marked "Exhibit C.")

Q. Is that a full and correct statement of all the monies received and paid out by Mr. Chambers, as trustee, during the month of October?

A. Yes, sir.

Q. The vouchers which accompany that statement were given by the parties, and for the consideration for which they purport to have been given?

A. Yes, sir. I would make the same explanation in regard to the item of $3,969.53 paid to the Memphis National Bank as I did regarding the payments made to said bank by P. B. Plumb, trustee, viz., that the debt was secured by the pledge of nails as collateral, and that all the money in this item was received as proceeds of the sale of said nails, and none of it was received in any other way. This money is included in the sales of coal, coke, iron, and nails included in the items showing the sales of coal, iron, &c. The original indebtedness was $12,200 to the Memphis National Bank, all of which is now paid except $1,030.47, and interest thereon from maturity. There are still some nails which should more than pay this unpaid balance.

Q. Do you know of any other monies that have been received or paid out that have not been included in these accounts?

A. No.

JOHN G. MURRAY.

889 Mr. W. L. CHAMBERS was then introduced and examined by Mr. THORINGTON, and said—

Q. Have you examined the account, Mr. Chambers, Exhibit "A," filed to-day in your name as trustee?

A. Yes, sir; I have.

Q. Does that account show all receipts and also all disbursements made by you personally as trustee?

A. It does.

Q. Are the items embraced in the accounts heretofore filed by you as trustee also embraced in this account?

A. They are.

Q. And you have the same vouchers in support of these that you had in support of the other account and which you proved on former examination?

A. Yes, sir. In reference to voucher number 789 which was not in proper form on my former examination, I now submit the correspondence between Moses Bros., the bankers with whom I kept my account as trustee at that time, and the correspondence of the Commercial Bank of Selma, at which bank the note in question was payable, showing that Moses Bros. on my order sent the money to the bank at Selma, and that the bank at Selma received the money. Diligent search has been made for the note itself, but it has not been found. The correspondence shows that this money was sent to the bank at Selma to be applied by the bank at Selma in payment of the note for $2,151.10, due at that bank to W. D. & K. Carter, of the 23rd day of May, 1888.

Q. The account filed to-day as Exhibit "A" embraces all the items and is supported by the vouchers that you testified about on your sormer examination from your personal knowledge, and that Mr. Murray testified about from his personal knowledge?

A. Yes, sir.

Q. And in substance is the same account, but recast so as to put it in a clearer and more specific shape?

A. Yes, sir.

Q. How have you kept the funds of the Brierfield Coal &
890 Iron Co. since you have been trustee of it?

A. I have kept that portion of them which were received from the proceeds of trustees' certificates in my name, as trustee, deposited at the bank of Moses Bros., in the city of Montgomery, until recently. Since my removal from Montgomery they have been kept in the bank at Sheffield.

Q. In your name as trustee?

A. Yes, sir; as trustee. As to the funds which have been received at the office of the company from the proceeds of the sale of merchandise, iron, coal, coke, &c., they have been kept partly in the safe of the company at Brierfield and partly at the Commercial Banking Company, at Selma, in the name of John G. Murray, agent for W. L. Chambers, trustee.

Q. All these funds have been kept separate and apart from your individual funds?

A. Yes, sir.

Q. And have not been used by you in any way for your individual purposes?

A. No, sir.

The hearing was then adjourned over until Tuesday, December 11th, 1888.

J. W. DIMMICK, *Sp. M.*

TUESDAY, *Dec.* 11, 1888.

The further hearing in this case is adjourned until Tuesday, Dec. 18, 1888, by consent of all the counsel.

J. W. DIMMICK, *Sp. M.*

TUESDAY, *Dec.* 18, 1888.

Further hearing adjourned until Friday, Dec. 28, 1888.

In the Circuit Court of the United States for the Middle District of Alabama.

WM. L. CHAMBERS, Trustee,
vs.
THE BRIERFIELD COAL AND IRON COMPANY, *et als.* } No. 103. In Equity.

891 WEDNESDAY, *November* 14, 1888.

Proceedings on reference resumed pursuant to adjournment.

Present: Wm. S. Thorington, Esq., representing the compl't; E. W. Pettus, Esq., representing the Commercial Bank of Selma, Esther A. Peter, and others, for whom he filed answers in the cause; P. C. Massie, Esq., representing the Brierfield Coal and Iron Company; and Milton Humes, Esq., representing Geo. I. Seney, Samuel Thomas, and Calvin S. Brice.

W. L. CHAMBERS, being duly sworn and examined, testifies as follows:

Examination by Col. THORINGTON:

Q. Look at that paper, Mr. Chambers, and state what it is (hands witness a paper).

A. This is a statement of W. L. Chambers, trustee of the Brierfield Coal and Iron Company, showing the proceeds of 41 trustee certificates, for one thousand dollars each, and the disbursements of that fund so far as the disbursements have been made up to the 27th day of September, 1888.

Q. Mr. Chambers, have you the vouchers?

A. I have the vouchers showing the disbursements made by me from the proceeds, as well as the trustee certificates. I received $40,025 from the sale of certificates.

Q. That is the correct amount?

A. Yes, sir.

Q. State now, Mr. Chambers, how you paid out that money, and what vouchers you have showing the same.

A. The first am't paid out by me, voucher No. 1, $3,687.89, 2 notes of the Brierfield Coal and Iron Co., payable to W. D. & K. Carter, Jr., one for $1,580.28 and the other for $1,553.33, and the balance due on another note to the same parties of $554.28.

Q. Have you the notes as vouchers?

A. I have, sir.

Q. How are they marked?

A. They are all fastened together and marked No. 1.

892 Q. When was that payment made by you?

A. On the 29th day of Feb., 1888.

Q. What is the next payment, and what voucher have you to the payment?

A. The next is voucher No. 2, $1,734.65; the payment was made on the 29th of Feb., 1888, to the E. T., V. & G. R. R. Co. for freight.

Q. For freight on property shipped to the Brierfield Coal & Iron Co.?

A. Yes, sir. The voucher consists of 13 receipts fastened together and signed by the ag't of the R. R. Co.

Q. What is the next payment made by you, to whom paid, when, & for what?

A. On March 3, 1888, paid to W. D. & K. Carter, Jr., $3,180.80 in settlement of 2 notes of the Brierfield Coal & Iron Co. to said W. D. & K. Carter, one for $1,583.33 and the other for $1,573.33, which, together with the interest due thereon, make voucher No. 3.

The am't paid was less than the face of the notes with interest, but was in full compromise of the indebtedness.

The next payment made by me, voucher No. 4, paid on the 7th day of March, 1888, $1,656.10, to French Nabors, the am't actually paid being in compromise of an indebtedness for $2,484.15.

Q. Is that one of the debts you were directed by the decree of the court to pay?

A. Yes, sir.

Q. What is the next payment?

A. Voucher No. 5, on March 7th, '88, paid Sharker & Danthit, $73.84.

Q. What was that payment for?

A. Fire-brick for the furnace—one car of fire-brick—material for the furnace which the court directed me to purchase. I have the receipt of the parties to whom the money was paid.

893 The next payment, voucher No. 6, paid March 13, '88, to Union Mining Company $229.50 for 2 car-loads of fire-clay used in repairing the furnace. I hold the receipt of the U. M. Co.

The next payment, voucher No. 7, paid Union Mining Co. $1,879.97 for 7 car loads fire-clay & fire-brick, material used for the same purpose, for which I hold receipt of the U. M. Co.

Next payment, voucher No. 8, $89.50, paid Weimer Machine Co. for the furnace repairs.

The next paym't, voucher No. 9, paid M'ch 19, '88, to D. M. Snow & Co., $121.50, for 18,000 brick, used in repairing the furnace, for which I hold their receipt.

Next paym't, voucher No. 10, pay-roll cash sent to J. G. Murray, ag't, $5,000.00.

Next paym't, voucher No. 10½, paid M'ch 19 to Thorington & Smith $25.00, for expenses to attend Shelby chancery court.

Next paym't, voucher No. 11, paid M'ch 24, '88, balance on pay-roll, $221.65.

Next paym't, voucher No. 12, pay-roll money sent to J. G. Murray, ag't, $778.35.

Next, voucher 13, paid Apr. 11, '88, to the Ingersoll Rock Drill Co. $300.00, used by the company at the mines. This was paid on Mr. Murray's draft attached to the voucher.

Next, voucher No. 14, pay-roll, $471.04, money sent to Mr. Murray to pay for labor for work on the furnace.

Next, voucher 15, paid Apr. 23, '88, to Thorington & Smith, $500.00. (Thorington & Smith, sol'rs for compl't.)

Next, voucher No. 16, paid Apr. 23, '88, to the State of Alabama, to Sayre, Stringfellow & Le Grand, att'ys, $2,883.39, on judgment on note in favor of the State of Ala., for 16th section land.

Next, paym't was on the 14th of Apr., '88, voucher 17, pay-roll, $4,000.00, cash sent to J. G. Murray, ag't, for that purpose. I
894 have the pay-roll for that paym't. I had it & sent it by express with my report to J. W. Dimmick, clerk of this court. The am't was shipped to Mr. Murray on the 14th of April, in currency. It was in the same form & on the same kind of paper as voucher No. 10 and made out by Mr. Murray and certified to by him, but I don't remember whether it was witnessed or not.

Next paym't, voucher No. 18, paid Apr. 28 to the State of Ala., $1,147.74, balance on judgment in favor of the State. Vouchers 18 & 16 were payments of the debts which I was directed by the decree of the court to pay to the State.

Next paym't, voucher No. 19, paid Apr. 30 to E. Seale, tax collector, $544.88, for State & county taxes on the company's property for the year 1887; the voucher is the tax collector's receipt.

Next payment, voucher 20, paid May 15, '88, for steel rail, on the draft of J. G. Murray, ag't, $480.00, rails which I was directed by the court to purchase for the property.

Next paym't, voucher 20½, paid taxes on the property as per order of the court Apr. 13, '88, $679.80.

As to next paym't, voucher 21, on May 22, '88, I authorized Moses Bros. to pay from the fund I had on deposit with them, as trustee, the sum of $2,151.10 in settlement of a note of the Brierfield Coal & Iron Co. to W. D. & K. Carter, due at the Commercial Bank of Selma, on the 23d of May, '88, and which was one of the notes I was directed by the court to pay. I have not in my possession the voucher for this payment. I produce the order given by me to Moses Bros. for that amount. It is stamped paid by them. I have no personal knowledge of the payment.

895 Next payment, voucher 22, paid May 19, $400 to Forbes, Liddell & Co.; bill of pipe shipped to Brierfield Coal & Iron Co. This pipe I was authorized by the court to purchase.

Next paym't, voucher 23, June 15, '88, paid to Forbes, Liddell & Co. $248.66; balance for same pipe.

Next payment, voucher 24, paid W. D. & K. Carter 2 notes, with interest and charges, amounting to $2,057.30. They were paid on the 18th June, 1888. I have the notes as vouchers. All the Carter notes about which I have testified were notes which I was ordered by the decree of the court to pay.

Next, voucher 25, 12 coupons, for $12 each, interest on trustee's certificates to July 1, '88, $480.00.

Next, voucher 26, $404.12, am't paid Webb & Tillman, att'ys, in settlement of the debt due by the Brierfield Coal & Iron Co. to Mrs. Rosely Lewis, which I was directed by the decree of the court to pay.

Next, voucher 27, paid July 27, 1888, coupons due on the 1st of Aug. on trustee's certificates (27 coupons).

Next, voucher 28, for $802, amount paid Aug. 27, '88, bill of the Dean Pump Co. for duplex pump, & $2 exchange on the draft, which I was directed by the court to pay.

Next, voucher 29, paid Sept. 27, '88, to Thorington & Smith, $500.00.

Thorington & Smith have represented me in this litigation as well as other litigations affecting this property.

The balance in my hands, after making these payments about which I have testified, is $2,216.22.

Many of these vouchers about which I have testified were paid on the draft of Mr. Murrray, as my ag't at Brierfield, attached thereto.

The reference was adjourned until to-morrow evening, 16th.

896 NOVEMBER 16, 1888.

On motion of counsel the reference was adjourned over to the 26th of November.

MONTGOMERY, ALA., *August 8th*, 1888.

Proceedings of reference resumed pursuant to adjournment.

Present: W. S. Thorington, Esq., E. W. Pettus, Esq., Thomas H. Watts, Jr., Esq., and P. C. Massie, Esq.

Examination by W. S. THORINGTON, Esq.:

T. J. PETER, being called, sworn, and examined as a witness for complainant, says:

I am president of the Brierfield Coal & Iron Company and have been since the organization of the company. I am familiar with all of the operations and workings of the company. I am familiar with the stock subscriptions of Huckabee and McCalley, and all other subscriptions. Under the authority given to us by the probate court we received subscriptions on the 4th day of May, 1882, to the capital stock of the Brierfield Coal & Iron Co. I personally made the following subscriptions, being authorized by the various parties to do so:

P. J. Peter, $120,000.
E. A. Peter, $50,000.
C. S. Plumb, $50,000.
Plumb & Hood, $50,000.
Samuel Thomas and associates, $75,000.
Justin S. Morrill, $10,000.

C. C. Huckabee subscribed for himself the sum of $15,000.

R. L. McCalley subscribed for himself $5,000.

Afterwards G. I. Seney and associates subscribed $75,000 by the signature of Samuel Thomas, who was one of the associates, and P. B. Plumb subscribed for C. S. Plumb $50,000, and for Plumb & Hood $50,000, and Justin S. Morrill subscribed for himself $10,000.

897 This was done for the purpose of carrying out by their personal subscription all the stock of the company. Afterward P. B. Plumb said that his partner, Hood, was not willing to carry out the subscription, and that his wife, Carrie S. Plumb, would assume the subscription of Plumb & Hood. She, in fact, did it. She paid for all the bonds that C. S. Plumb and Plumb & Hood were entitled to under their subscription, and received the stock which they were also entitled to, and paid a certain number of calls, as shown by the testimony of Mr. Murray. I have read Mr. Murray's testimony. Mr. Murray in his testimony states correctly the facts with reference to the organization of the company, subscription, stock, and issuing of a mortgage, and the bonds and the stock, and the payment of the bonds and the stock by each of the subscribers of the company. Before the organization of the company on the 25th day of February, 1882, I personally made a contract with C. C. Huckabee for the purchase of certain property described in the contract of that date, which is marked Exhibit # 4. I employed an attorney to investigate the title, and he discovered some defects in the title. I accordingly refused to go on with the contract unless some modifications were made, and on the 24th day of April, 1882, C. C. Huckabee and I made a supplemental contract, which is attached and made a part of Exhibit # 4. At the organization of the company Mr. Huckabee subscribed for $15,000 of the stock of the company and Robert L. McCalley for $5,000 upon the same terms as all other parties subscribed stock, in accordance with the provisions of the contract. I said and reiterated many times to Mr. Huckabee and Mr. McCalley,

898 at the time this contract was signed and between that and the time of the subscription to the stock of the company, that they would be treated just the same as every other stockholder; that they should pay the same and receive the same in every respect. After the organization of the company, on the 8th day of May, 1882, C. C. Huckabee made his deed to the Brierfield Coal & Iron Company for the land which I had agreed to buy in Exhibit # 4, as shown by deed marked Exhibit # 6, and at that time I gave to C. C. Huckabee a receipt for $15,000, which is marked Exhibit # 5, and a like receipt for $5,000 to Robert L. McCalley, and received from them at the same time an order to retain the securities under their subscription, which is marked Exhibit # 7. The title to the property in dispute was not made satisfactory, as provided for in Exhibit # 7, until some time in the year 1886. After this matter of the title to these lands in litigation was closed up Colonel Huckabee demanded his stock and his bonds. I had an accounting made by Mr. Murray, which showed that after deducting the money which we had advanced to Mr. Huckabee by his order, that there would be $13,000 of bonds and stock coming to him when they were paid for—

the coupons on the $16,000 of bonds amounting to about $2,166.00—and Colonel Huckabee agreed that if we would then deliver him the thirteen bonds that we would take a credit on his stock account for $2,166.00 and would pay the remainder of the assessment as soon as that had been levied by the order of the board of directors on the stock. We gave him at that time a receipt, which I signed as president of the company, I think, for the $2,166.00 as a payment on the stock. This receipt specified that it was a payment on account of the stock that was given to him at that time by me

899 in Mr. Murray's presence. He took the receipt, and I would not have given him the bonds if he had not agreed positively to pay his stock subscription. Mr. Huckabee was present at every meeting of the board of directors, at every meeting that levied an assessment, and at that time statements were made to the directors by me showing the amount of money which had been received from the sale of bonds and the amount which the company owed and the necessity of making assessments upon the stockholders for the purpose of paying the indebtedness of the company. He voted for the assessment, for the call, always, and in addition to that always said that if it were not for his poverty he would be very glad to pay his subscription on stock and to assist me in carrying the indebtedness of the company, and until several months after he received his bonds he never made any claim that he was not to pay his subscription on stock. The first call was made July 19th, 1884; the second was made April 20th, 1885, and the third was made January 1st, 1886, which were all the calls that were made subsequent to the date of the receipt marked Exhibit # 5 and prior to the settlement of February, 1886, when the bonds and receipt for assessment on stock were delivered to him. He never paid any money to the company, except in the way I have indicated, on his bonds and stock. He sold his bonds, I think, to Mr. Fitzgerald. Mr. Huckabee told me that he got par for his thirteen bonds, which he sold to Mr. Fitzgerald. He has never made any claim to the company, either he or McCalley, that they had any claim upon the company's property, except as he makes it now.

900 Several months after this settlement of April, 1886, I demanded of him that he pay the remainder of his assessment on his stock, and then he said that he had receipts showing that he and McCalley had paid for their stock. I told him so had every other stockholder, but that did not relieve him from paying his assessment, as he well knew, and he again said that he would try to raise the money and pay his assessment. I did not see him after that until the company went into the hands of a trustee.

Mr. McCalley, of course, was not entitled to his stock and bonds, as provided for in Exhibit # 7, until after the litigation with reference to the title to the land was settled, which was early in 1886. At no time did McCalley made upon me any demand for his bonds or his stock, and after Huckabee stated that McCalley claimed to have paid for his stock and bonds I gave instructions to Mr. Murray to not deliver the bonds until all the stock and bonds, assess-

ments had been paid. McCalley never came near us, nor did he make any demand upon us.

In 1886 I was endeavoring to negotiate the sale of the entire issue of bonds—500,000 bonds—and I asked consent from all who owned bonds or had any claim upon bonds to permit me to sell them, and McCalley and the rest consented that I might sell the bonds.

The bonds and stock were ready to be delivered to McCalley whenever he paid his assessment the same as other stockholders, and this he never did. Senator Plumb arranged with me that he would send, as soon as he returned to Washington, all the past-due coupons on the bonds which Mrs. Plumb held and directed me to have them credited on account of the assessment on her stock. The coupons were sent and I delivered them to Mr. Murray with instructions to give Mrs. Plumb credit on account of the assessment on her stock.

901 As president, I never consented that these coupons be returned to Mrs. Plumb. When the property was handed over to the trustee I turned over these coupons to Mr. Murray as his (the trustee's) agent, with all the property of the company. I have read Mr. Murray's testimony with reference to the monies that were borrowed by the company, which paper I indorsed, and his testimony is correct on that subject. I know that the Brierfield Coal & Iron Company obtained some rails from the East Tennessee, Virginia and Georgia Railroad Co. The arrangement for these rails was made between Senator Plumb and General Thomas. They differed as to what the terms of the agreement were. Major Fink, who was at that time general manager of the East Tennessee, Virginia & Georgia R. R. Co., a couple of years after these rails were obtained, made demand for payment. I finally met him and General Thomas, who was president of the East Tennessee, Virginia & Georgia R. R. Co., and it was agreed between us that we should pay no interest for the use of the rails, but that we should within a given time pay for the rails, but I forget now whether it was two or three years, but there was some specified time, and Major Fink said that he would draw up a contract and send to Mr. Hudson for us to sign with reference to the matter. Captain Bridges, who was superintendent at Selma, sent up a contract which was drawn by Major Hudson, which was not exactly in accordance with the agreement made with Major Fink, and he either sent it back to Mr. Hudson for modification or I modified it and gave it to Mr. Bridges myself, I don't remember which, with my signature to it, as I think. I think it was signed by Major Hudson, and provided for the payment of interest, whereas the

902 agreement with Major Fink was that no interest should be paid. My best recollection is that I ran my pen through the provision providing for the payment of interest, which made it conform, as I thought, with the agreement with Major Fink, and I either gave it or sent it to Captain Bridges. Mr. Hudson's headquarters were at Knoxville, Tennessee. The agreement, as I remember it, was that we were to pay for the rails within a given time—either two or three years. This contract with Major Fink was made several years after the deed of trust to P. B. Plumb, trustee, was made.

On the 6th day of February, 1883, I made a contract with William D. Carter and Kearsley Carter, Junior, and the Bibb Furnace Company for the purchase of what was known as the Bibb Furnace property. The contract between the Bibb Furnace Co., W. D. & K. Carter, Junior, and T. J. Peter and the Brierfield Coal & Iron Co., dated 6th of February, 1883, is shown to witness and identified by him, and is read in evidence and marked Exhibit # 8 by the master. After the contract, Exhibit # —, was made on the 9th day of June, 1883, the Bibb Furnace Co. and William D. Carter and K. Carter, Jr., made a deed to the Bibb Furnace Company, to the Brierfield Coal & Iron Company, in accordance with the terms of the contract, marked Exhibit # 8, which deed is now read and put in evidence, marked Exhibit # 9, and that deed speaks of the Bibb Furnace Co. as a corporation, signed by William D. Carter, president, with the seal of the company attached to it, and the Brierfield Coal & Iron Co. gave notes for the deferred payments to William D. and K. Carter, Jr., and secured said notes by a mortgage upon the
903 property conveyed, as Exhibit # 9. The notes were all made payable to William D. and K. Carter, Jr. The notes were all paid at maturity until the last one, which fell due in June, 1887, at which time there were certain unsettled matters between the Carters and the Brierfield Coal & Iron Co., and on the 12th day of January, 1887, a contract was made between the Brierfield Coal & Iron Co. and W. D. Carter and K. Carter, Jr., which contract is now read and offered in evidence as Exhibit # 10.

All of the notes provided for in this contract, marked Exhibit # 10, have been paid. Now, under the provisions of this contract, the sum of $1,400.00 had been retained by the company until the Carters make title to 280 acres of land which was embraced in the original deed of conveyance, marked Exhibit # 9, but which land, it was discovered, belonged to other parties, to which land they have never obtained any title nor, so far as I know, made any effort to obtain any title. That particular land belongs to the Alabama Mineral Land Company. There was also retained under this contract the sum of $900.00 until the Brierfield Coal & Iron Co. should be finally discharged from the garnishment by Spencer Brothers against it in the circuit court of Bibb county, which garnishment was discharged in the latter part of August, 1887, and the sum of $1,000.00 was retained until the garnishment against the Brierfield Coal & Iron Co., in the suit of Frank Fitch in the chancery court of Bibb county, should be discharged, which garnishment was discharged at the last term of the chancery court; and the sum of $2,000.00 was retained until the garnishment in the suit of H. C. Fancher in the chancery court of Bibb county should be discharged, which garnishment has not yet been discharged. Since the date of the con-
904 tract, marked Exhibit 10, the Fancher Brothers have garnisheed the Brierfield Coal & Iron Co., as debtors to William D. and Kearsley Carter, Jr., in the suit pending in the circuit court of Bibb county, for the amount of $2,000, as I think. The money in the Spencer garnishment has not been paid, because W. D. Carter owes the Brierfield Coal & Iron Company about the sum of $4,500.00,

which is due and unpaid. W. D. Carter is insolvent, I think. Attempts have been made to collect from him by executions, all of which have been unsuccessful. The statements they have always made to me were that they owned (the furnace) real estate jointly, and that the business at that time was done by the Bibb Furnace Co., a corporation. The indebtedness of W. D. Carter to the Brierfield Coal & Iron Co. is for monies that were advanced by that company for him, at his request. At the time the contract was made with Mr. Carter they did not claim that they were partners.

Examination by E. W. PETTUS, Esq.:

Mrs. E. A. Peter subscribed for $50,000 of stock and paid that amount on it in cash, at different times. She paid ninety (90) cents on the dollar for all of her bonds. She paid it before she got the bonds. She bought 218 bonds—that is, she paid for 218 bonds.

(Witness here produces and proves bonds held by Mrs. E. A. Peter as follows:)

Bonds numbered from 1 to 40, inclusive, with October, 1887, coupons attached; bonds numbered from 74 to 77, inclusive, with October, 1887, coupons attached; bonds numbered from 123 to 127, inclusive, with October, 1887, coupons attached; bonds numbered from 180 to 194, inclusive, with October, 1887, coupons attached; bonds numbered from 215 to 228, inclusive, with October, 1887, coupons attached.

905 Bonds numbered from 245 to 250, inclusive, with October, 1887, coupons attached; bonds numbered from 254 to 259, inclusive, with October, 1887, coupons attached; bond numbered 261, with October, 1887, coupons attached; bond numbered 260, with October, 1887 coupons attached; bond numbered 265, with October, 1887, coupons attached; bonds numbered from 320 to 323, inclusive, with October, 1886, coupons attached; bond numbered 360, with October, 1887, coupons attached; bonds numbered from 362 to 370, inclusive, with October, 1887, coupons attached; bonds numbered from 306 to 308, inclusive, with October, 1887, coupons attached; bonds numbered 313 to 319, inclusive, with October, 1887, coupons attached; bonds numbered from 334 to 358, inclusive, with October, 1887, coupons attached; bonds numbered from 374 to 380, inclusive, with October, 1887, coupons attached; bonds numbered from 390 to 422, inclusive, with October, 1887, coupons attached; bonds numbered from 459 to 488, inclusive, with October, 1887, coupons attached; bonds numbered from 495 to 500, inclusive, with October, 1887, coupons attached. 3 coupons, payable October 1st, 1886, numbered from 306 to 308, inclusive; 40 coupons, payable Oct. 1, 1886, numbered from 1 to 40, inclusive.

5 coupons, payable Oct. 1, 1886, numbered from 74 to 78, inclusive.

7 coupons, payable Oct. 1, 1886, numbered from 313 to 319, inclusive.

5 coupons, payable Oct. 1, 1886, numbered from 123 to 127, inclusive.

7 coupons, payable Oct. 1, 1886, numbered from 374 to 380, inclusive.

6 coupons, payable Oct. 1, 1886, numbered from 235 to 240, inclusive.

20 coupons, payable Oct. 1, 1886, numbered from 180 to 199, inclusive.

33 coupons, payable Oct. 1, 1886, numbered from 390 to 422, inclusive.

4 coupons, payable Oct. 1, 1886, numbered from 200 to 203, inclusive.

27 coupons, payable Oct. 1, 1886, numbered from 208 to 234, inclusive.

30 coupons, payable Oct. 1, 1886, numbered from 459 to 488, inclusive.

6 coupons, payable Oct. 1, 1886, numbered from 245 to 250, inclusive.

906 6 coupons, payable Oct. 1, 1886, numbered from 495 to 500, inclusive.

35 coupons, payable Oct. 1, 1886, numbered from 324 to 358, inclusive.

15 coupons, payable Oct. 1, 1886, numbered from 359 to 373, inclusive.

4 coupons, payable Oct. 1, 1886, numbered from 386 to 389, inclusive.

14 coupons, payable Oct. 1, 1886, numbered from 423 to 436, inclusive.

6 coupons, payable Oct. 1, 1886, numbered from 443 to 448, inclusive.

6 coupons, payable Oct. 1, 1886, numbered from 453 to 458, inclusive.

40 coupons, payable Apr. 1, 1886, numbered from 1 to 40, inclusive.

5 coupons, payable Apr. 1, 1886, numbered from 74 to 78, inclusive.

5 coupons, payable Apr. 1, 1886, numbered from 123 to 127, inclusive.

24 coupons, payable Apr. 1, 1886, numbered from 180 to 203, inclusive.

43 coupons, payable Apr. 1, 1886, numbered from 208 to 250, inclusive.

3 coupons, payable Apr. 1, 1886, numbered from 306 to 308, inclusive.

124 coupons, payable Apr. 1, 1886, numbered from 313 to 436, inclusive.

36 coupons, payable Apr. 1, 1886, numbered from 453 to 486, inclusive.

6 coupons, payable Apr. 1, 1886, numbered from 495 to 500, inclusive.

40 coupons, payable Apr. 1, 1887, numbered from 1 to 40, inclusive.

4 coupons, payable Apr. 1, 1887, numbered from 74 to 77, inclusive.
5 coupons, payable Apr. 1, 1887, numbered from 123 to 127, inclusive.
15 coupons, payable Apr. 1, 1887, numbered from 180 to 194, inclusive.
27 coupons, payable Apr. 1, 1887, numbered from 208 to 234, inclusive.
6 coupons, payable Apr. 1, 1887, numbered from 245 to 250, inclusive.
13 coupons, payable Apr. 1, 1887, numbered from 253 to 265, inclusive.
3 coupons, payable Apr. 1, 1887, numbered from 306 to 308, inclusive.
7 coupons, payable Apr. 1, 1887, numbered from 313 to 319, inclusive.
35 coupons, payable Apr. 1, 1887, numbered from 324 to 358, inclusive.
1 coupon, payable Apr. 1, 1887, numbered 360.
9 coupons, payable Apr. 1, 1887, numbered from 362 to 370, inclusive.
7 coupons, payable Apr. 1, 1887, numbered from 374 to 380, inclusive.
47 coupons, payable Apr. 1, 1887, numbered from 390 to 436, inclusive.
3 coupons, payable Apr. 1, 1887, numbered from 443 to 445, inclusive.
36 coupons, payable Apr. 1, 1887, numbered from 453 to 488, inclusive.
6 coupons, payable Apr. 1, 1887, numbered from 495 to 500, inclusive.
Total number of coupons 829.

907 (Each of said coupons, for the sum of thirty dollars, were filed with the master and retained by him. The bonds, after being marked "filed and allowed" by the master, were withdrawn by Mrs. Esther A. Peter.)

Mrs. Peter paid for all these bonds filed here to-day at 90 cents on the dollar; bonds 1, 2, 245, 246, 247 are registered in the name of T. J. Peter, trustee, for E. T. Peter; bonds 3, 4, 248, 249, 250 are are registered in the name of T. J. Peter, trustee, for Florence J. Peter; bonds 5, 6, 189, 190, 191 are registered in the name of T. J. Peter, trustee, for George F. Peter; bonds 7, 8, 192, 193, 194 are registered in the name of T. J. Peter, trustee, for Blanche E. Peter. Mrs. Peter has the bonds; they were a donation from her to her children. I paid $83,640.85 on my stock; the balance is unpaid. The company has not paid any notes upon which I was indorser for the company since the trustee'- possession. I have not paid any of those debts for which I was a surety. Seventy-one of my bonds are up as collateral for those debts.

I am indorser on some other paper of the company, for which I have not put up any collateral.

Examination by W. S. THORINGTON, Esq.:

About eight hundred thousand dollars of money was put into the Brierfield property by the Brierfield Coal & Iron Company.

(Adjournment.)

THURSDAY, *August 9th*, 1888.

Proceedings of reference resumed pursuant to adjournment.
Present: E. W. Pettus, Esq.; W. S. Thorington, Esq.

Examination of T. J. PETER continued.

Examination by E. W. PETTUS, Esq.:

The punched coupons were never paid by the company or any one else. They were attached to bonds that were up as collateral security for a loan at the National Bank of America, at Boston, put there by Mrs. Peter.

908 At the maturity of the coupons Mr. Luke, cashier of the bank, was directed to clip off the coupons and send them to Brierfield. Without direction or authority from anybody he punched them and sent them by mail.

T. J. PETER.

(Upon motion reference is adjourned over until Thursday, the 27th day of September next, at 10 o'clock a. m.

In the Circuit Court of the United States for the Middle District of Alabama.

WM. L. CHAMBERS, Trustee,
vs.
THE BRIERFIELD COAL AND IRON CO. & Others. } In Equity. No. 103.

FRIDAY, *November* 2, 1888.

Proceedings on reference resumed pursuant to adjournment.
Present: Wm. S. Thorington, Esq., representing complainant; E. W. Pettus, Esq., representing the Commercial Bank of Selma, Esther A. Peter, and others, for whom he filed answers in the cause; P. C. Massie, representing the Brierfield Coal and Iron Co., &c.

Mrs. M. S. Pomeroy, of Washington, D. C., offered and proved before the master nine (9) bonds, numbered 229, 230, 231, 233, 234, 262, 263, and 234, for one thousand dollars each; bonds 262, 263, & 264 are payable to bearer, and all the others are registered in the name of Mrs. Pomeroy. The first coupon due on each of the bonds is payable on the first day of April, 1889. Justin S. Morrill, of Strafford, Vt., offered and proved before the master 11 bonds, numbered, respectively, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, for one thousand dollars each, with 2 past-due coupons attached to each

of said bonds, 11 payable first day of April, 1888, 11 payable
909 first day of Oct., 1888, for $30 each; bonds number- 112, 113, 114, 115, 116, & 117 are in the name of Justin S. Morrill; bonds 118, 119, 120, 121, & 122 are payable to bearer, which bonds are now filed by the master.

THOS. J. PETER, being called and examined by E. W. PETTUS, counsel for Mrs. Peter, testifies as follows:

A paper is shown to witness, which he states is an order on the master for all of the past-due coupons heretofore filed in the name of the Ala. Nat. Bank. The paper was executed by Joseph F. Johnston, president of the Ala. Nat. Bank of B'h'm. Paper offered in evidence marked Exhibit 18. 45 coupons were offered in evidence as the property of Mrs. Peter, and the witness, T. J. Peter, states that these 45 coupons were filed by the Ala. Nat. Bank heretofore, and were purchased by Mrs. Esther A. Peter since they were filed from the Ala. Nat. Bank, and were clipped from the bonds heretofore filed by said bank—

5 due Oct. 1st, 1886; 5 due Apr. 1st, 1887; 5 due Oct. 1, 1887; 5 due Apr. 1, 1888, and 5 due Oct. 1, 1888; am't of each coupon, $30.00.

96 coupons were offered in evidence as the property of Mrs. Peter, and witness states that these 96 coupons were filed by the Commercial Bank of Selma. 15 of these coupons are payable Apr. 1, 1887; 27 are payable Oct. 1, 1887; 27 are payable Apr. 1, 1888; 27 are payable Oct. 1, 1888.

These ninety-six coupons have been heretofore proven as the property of the Commercial Bank of Selma as collateral, and witness states that they were bought by Mrs. Esther A. Peter from the Commercial Bank since they were filed.

The notes here presented are the notes which were given by the Brierfield Coal and Iron Company, with T. J. Peter as surety and endorser, for money borrowed by the Brierfield Coal & Iron Company from the Commercial Bank of Selma, and for the payment of which T. J. Peter deposited bonds of the Brierfield Coal & Iron Com-
910 pany belonging to him as collateral security. These notes are as follows: One note dated Apr. 12, 1887, for $2,500.00, payable six months after date at the Commercial Bank of Selma, with 2 renewals, one dated Sept. 15, '87, and the other dated March 18, 1888, and each renewal for $2,500, with interest from Sept. 15, '87; one note for $7,500, dated June 20, '87, with 2 renewals, the first dated Dec. 23, '87, and the second dated June 26, '88, each of the renewals for $7,500, with interest from Dec. 23, '87; one note for $4,000, dated July 28, '87, payable six months after date, with 2 renewals, the first dated Jan. 31, 1888, and the second dated August 3, '88, each renewal with interest from Jan. 31, '88; one note for $5,000, dated Feb. 12, '87, payable six months after date at the Commercial Bank of Selma, with two (2) renewals, the first dated Aug. 15, '87, and the second dated June 21, '88, each renewal with interest from Aug. 15, '87; one note for $3,500, dated Feb. 23, '87, payable six months after

date, with 3 renewals, the first dated Aug. 26, '87, the second dated Dec. 29, '87, and the 3rd dated July 2, '88, each renewal payable 6 months after date, for $3,500, with interest from Aug. 26, '87. These are the same notes that were heretofore proved as the property of the Commercial Bank of Selma and for which they held my bonds as collateral. These notes have been paid by me to the Commercial Bank of Selma. I paid these notes to the Commercial Bank of Selma under an arrangement with the Brierfield Coal and Iron Company, in substance, that when paid by me they were to be treated and considered as a payment on my stock subscription. This arrangement was evidenced by a resolution of the board of directors, heretofore offered in evidence. The Commercial Bank of Selma still holds my bonds which they held as collateral for these notes, but the debt of the Brierfield Coal & Iron Co. has been paid. Witness claims the payment of these notes as a payment on his stock
911 subscription. The said notes are filed with the master, fastened together as one exhibit, and marked Exhibit No. 19. The amount paid on these notes, as per Exhibit No. 13, was paid on the 20th day of Oct., 1888, and amounted, principal and interest, to $24,265.68 on that day; said T. J. Peter also produced and offered in evidence one note, dated Oct. 3, '87, and payable on the 22d day of Jan., 1888, made by the Brierfield Coal and Iron Company, with T. J. Peter as surety, for $4,500, which note is a renewal of the original note for $4,500, dated June 8, 1887, and payable 4 months after date to Geo. H. Waddell, cashier of the Ala. Nat. Bank, for $4,500, made by the Brierfield Coal & Iron Co., T. J. Peter as surety, and also another note for $3,500, dated May 16, '87, and payable on the 13th day of Sept., 1887, to the order of the Ala. Nat. Bank at said bank, in Birmingham. These are the same notes which were proved as the property of the Ala. Nat. Bank heretofore and for the payment of which they held 9 bonds belonging to me as collateral. I have paid these 2 notes to the Ala. Nat. Bank and I claim an allowance for the am't of said notes, with interest, as a payment on my stock subscription under the resolution aforesaid.

The notes are fastened together, filed by the master, & marked Exhibit No. 20. The am't paid on these last-named notes to the Ala. Nat. Bank were paid on the 17th day of Oct., 1888, and amounted, principal and interest, on that day to $8,704.85.

Upon motion of counsel for Maj. Peter the request heretofore made at the hearing on Oct. 15, '88, that Maj. Peter be credited on his stock subscription with the 2 $2,500 notes, with interest, paid to the Commercial Bank of Selma by Mr. Murray and transferred by said Murray to T. J. Peter on the 17th day of Sept., 1888, is withdrawn, because the transaction between said Peter and said
912 Murray did not amount to a payment by Maj. Peter of said notes, but to a purchase of the same from said Murray with the collaterals. The 2 notes above referred to are also withdrawn.

Examination by Mr. THORINGTON:

Preston B. Plumb resided at Emporia, Kan., when the bill in this case was filed.

Q. Who of the def'ts resided in Ala. at the time the bill was filed?

A. C. C. Huckabee, Rob't L. McCalley, Jno. G. Murray, Ala. Nat. Bank, City Nat. Bank, & Commercial Bank of Selma, J. F. Fitzgerald, W. D. & K. Carter, C. L. Bates, E. T. Peters, & the Brierfield Coal & Iron Co.

Q. Where did the other def'ts reside at that time?

A. Carrie S. Plumb resided at Emporia, Kan.; Sam'l Thomas, C. S. Brice, & Geo. I. Seney resided in New York; Mrs. M. S. Pomeroy resided in Washington, D. C.; Justin S. Morrill resided in Strafford, Vt.; T. J. Peter & Esther A. Peter resided at Waukesha, Wis., & Laura E. Williams resided at Hamilton Co., Ohio. All the natural persons are over the age of 21 years.

T. J. PETER.

The bonds of Mrs. E. A. Peter heretofore withdrawn for safe keeping were returned by T. J. Peter and delivered to the master.

The reference was adjourned until Wednesday, Nov. 14, 1888.

FRIDAY, *December* 28, 1888.

Upon motion of counsel for defendant, Thomas J. Peter, the reference was adjourned over to Monday, the 31st day of Dec., 1888.

MONDAY, *December* 31, 1888.

Present: Thorington and Smith, Esqrs., representing the complainant; P. C. Massie, Esq., representing the defendant.

913 THOMAS J. PETER, recalled, testifies as follows:

Examination by Mr. MASSIE:

Q. Major, you testified heretofore about a note of the Brierfield Coal and Iron Company that was held by J. T. Fitzgerald for $6,000.00 on which you were surety; has that note ever been paid?

A. Yes, sir; I paid it. There were 2 notes for $6,000.00 and one for $3,000.00 of the Brierfield Coal and Iron Company held by Fitzgerald, upon all of which I was surety; one of these notes were secured by 7 of my individual bonds; the other 2 notes were secured by 13 bonds belonging to the Brierfield Coal and Iron Company. I have paid the note of $6,000.00, which was secured by my individual bonds, and here present Mr. Fitzgerald's receipt for the same, and ask that I be given credit on my stock assessment for this $6,000.00 and interest thereon from the 15th day of September, 1886, to the 15th day of Nov., 1888, when the same was paid, which I paid to Mr. Fitzgerald for the Brierfield Coal and Iron Company. The receipt of Fitzgerald is here filed, identified by the master, marked Exhibit No. 21. I here present on behalf of Mrs. E. A. Peter coupons bought by her from J. T. Fitzgerald as follows:

26 coupons, 13 due Oct. 1, 1886, and 13 due April 1, 1887, clipped from bonds numbered 437, 206, 207, 205, 204, 450, 439, 440, 438, 442, 441, 451, & 452, 2 from each bond; 4 coupons clipped from bond 78, payable April, '87, Oct., '87, Apr., '88, & Oct., '88; 3 coupons clipped from bond 204, payable Oct., '87, Apr., '88, & Oct.,

'88; 3 coupons clipped from bond 205, payable Oct., '87, Apr., '88, & Oct., '88; 3 from bond 206, payable Oct., '87, Apr., '88, & Oct., '88; 3 from bond 207, payable Oct., '87, Apr., '88, & Oct., '88; 4 from bond 359, payable Apr., '87, Oct., '87, Apr., '88, & Oct., '88; 4 from bond 361, payable Apr., '87, Oct., '87, Apr., '88, and Oct.,
914 '88; 4 from bond 386, payable Apr., '87, Oct., '87, Apr., '88, and Oct., '88; 4 from bond 387, payable Apr., '87, Oct., '87, Apr., '88, & Oct., '88; 4 from bond 388, payable Apr., '87, Oct., '87, Apr., '88, and Oct., '88; 4 from bond 389, payable Apr., '87, Oct., '87, Apr., '88, & Oct., 1888; 3 from bond 437, payable Oct., '87, Apr., '88, & Oct., '88; 3 from bond 438, Oct., '87, Apr., '88, & Oct., '88; 3 from bond 439, payable Oct., '87, Apr., '88, & Oct., '88; 3 from bond 440, payable Oct., '87, Apr., '88, & Oct., '88; 3 from bond 441, payable Oct., '87, Apr., '88, & Oct., '88; 3 from bond 442, payable Oct., '87, Apr., '88, & Oct., '88; 3 from bond 450, payable Oct., '87, Apr., '88, & Oct., '88; 3 from bond 451, payable Oct., '87, Apr., '88, & Oct., 88; 3 from bond 452, payable Oct., '87, Apr., '88, & Oct. '88. These same coupons have been heretofore filed and allowed to J. T. Fitzgerald; the first 26 were filed detached from the bonds; the remainder were previously filed attached to the bonds from which they have been clipped; total, 93.

On the part of Mrs. Peter I also present and prove the following coupons, which were due on the 1st day of Oct., '85, and have not been paid by the company: Numbers 12, 389, 409, 411, 406, 407, 405, 404, 401, 400, 398, 397, 396, 402, 395, 394, 393, 392, 391, 390, 380, 379, 378, 377, 376, 375, 374, 464, 465, 466, 467, 469, 470, 471, 472, 463, 482, 481, 480, 479, 180, 194, 478, 477, 476, 468, 475, 474, 473, 462, 461, 323, 322, 320, 321, 75, 76, 77, 78, 123, 124, 125, 193, 192, 191, 190, 189, 188, 187, 186, 185, 184, 183, 182, 235, 181, 234, 233, 232, 384, 231, 223, 222, 221, 220, 219, 218, 217, 32, 33, 34, 35, 216, 31, 230, 36, 229, 228, 227, 226, 225, 214, 215, 211, 236, 7. 10, 8, 9, 11, 13, 1, 2, 6, 3, 5, 29, 4, 30, 212, 456, 213, 14, 15, 16, 455, 17, 18, 250, 249, 248, 247, 246, 245, 244, 243, 242, 241, 240, 239, 127, 237, 238, 425, 426, 199, 198, 197, 423, 427, 424, 319, 313, 314, 316, 306, 318, 317, 315, 307, 308, 483, 19, 37, 38, 22, 20, 23, 24, 25, 414, 453, 435, 436, 39, 40, 434, 484, 485, 487, 488, 21, 495, 496,
915 497, 498, 499, 500, 486, 196, 428, 195, 26, 459, 201, 413, 203, 399, 419, 417, 200, 421, 202, 416, 415, 408, 418, 420, 208, 210, 28, 126, 224, 412, 335, 334, 333, 332, 331, 330, 329, 382, 328, 327, 388, 383, 386, 387, 381, 373, 372, 371, 370, 369, 368, 367, 366, 365, 364, 363, 362, 360, 359, 358, 357, 403, 410, 356, 355, 354, 353, 352, 361, 351, 74, 460, 350, 349, 348, 347, 346, 457, 345, 344, 326, 325, 324, 343, 342, 341, 340, 339, 338, 337, 336, 458, 454, 38, 209, & 27.

The complainant never paid any of its interest in cash, but credited the stockholders when they presented coupons with so much assessment paid on their stock to the value of the coupons presented by them as the coupons were due, but Mrs. Peter paid her assessment in cash, and these coupons were not presented at the time they were due for payment in consequence of her paying in cash.

T. J. PETER.

The reference was then adjourned until January 9, 1889.

porators and giving them authority to open books of subscription to the capital stock of said corporation, requiring them to give such notice as your honor may deem fit of the time and place of the opening of books of subscription as according to the statute in such cases made and provided.

C. C. HUCKABEE.
THOMAS J. PETER.
R. L. McCALLEY."

It is therefore ordered that a commission be issued by the judge of probate as prayed for in said petition.

JOHN S. GARDNER,
Judge of Probate.

922 In the Probate Court of said County.

STATE OF ALABAMA, }
Bibb County. }

To Caswell C. Huckabee, Thos. J. Peter, and Rob't L. McCalley, Greeting:

Whereas a declaration in writing subscribed by you has this day been filed in said court in words following:

(Copy declaration down to "according to the statute in such case made and provided.")

You are hereby appointed, commissioned, and constituted a board of corporators and are fully authorized to open books of subscription to the capital stock of the Brierfield Coal and Iron Company, the proposed corporation, and you are required to give one week's notice of the time and place of opening books of subscription by publication in a newspaper published in this county called the Bibb Blade, and by written notice posted at the court-house door in the town of Centreville, in said county.

Given under my hand at my office in Centreville, in said county, this 27th day of April, 1882.

(Notice given as required by the above commission.)

Following is copy of notices signed by C. C. Huckabee, Thomas J. Peter, and Rob't L. McCalley:

Notice is hereby given that a commission constituting the undersigned a board of corporators under the name of Brierfield Coal and Iron Company was issued by the Hon. Jno. S. Gardner, judge of probate of Bibb county, Ala., giving them authority to open books of subscription to the capital stock of the proposed company, and requiring them to give one week's notice by publication in the newspaper published in Bibb county and by posting one written
923 notice at the court-house door, in said county, of the time and place of opening books of subscription. Notice is therefore

hereby given that said books will be opened at Brierfield, in said county, on the 4th day of May, 1882.

C. C. HUCKABEE.
THOS. J. PETER.
ROB'T L. McCALLEY.

STATE OF ALABAMA, }
County of Bibb. }

I, J. Madison Langston, one of the proprietors of the Bibb Blade, hereby certify that the above notice was published in said Bibb Blade one week, in accordance with the requirements of the order made by Jno. S. Gardner, judge of probate.

J. M. LANGSTON,
Proprietor Bibb Blade.

Brierfield, Ala., 4th May, 1882.

STATE OF ALABAMA, }
County of Bibb. }

To the honorable the probate judge of said county:

We, the undersigned board of corporators of the Brierfield Coal and Iron Company, respectfully certify unto your honor that the organization of said company has been completed as provided for by section 1806 of Code of 1876 of the State of Alabama, and that there has been paid to the president of said company in cash at least 20 % of the capital subscribed and not less than 50 % of the $750,000.00 of the proposed capital stock of said company has been subscribed by *bona fide* subscribers; and that, after due and legal notice had been given, as was required by the order of your honor as evidenced by the certificates hereto attached marked Exhibit A and made part of the certificate, the books of subscription were opened at Brierfield on the 4th day of May, 1882.

924 All of which is respectfully certified and submitted to your honor as is by the statute in such cases provided.

Witness our hands this 4th day of May, 1882.

C. C. HUCKABEE.
THOS. J. PETER.
ROB'T L. McCALLEY.

EXHIBIT A.

(*Certificate of Bibb Blade, &c.*)

STATE OF ALABAMA, }
County of Bibb. }

In the matter of the petition of C. C. Huckabee, Thomas J. Peter, and Robert L. McCalley, filed in the probate court of said county on the 27th day of April, 1882, declaring their desire to form themselves into a private corporation for the purposes stated in said petition.

This day came the said C. C. Huckabee, Thos. J. Peter, and Rob't

L. McCalley, the board of corporators of the said private corporation to be known as the Brierfield Coal and Iron Company, and certify and present to the probate judge of said county, in writing, over their signatures, the following certificate of their organization of the Brierfield Coal and Iron Company:

STATE OF ALABAMA, }
County of Bibb. }

To the honorable the probate judge of said county:

We, the undersigned board of corporators of the Brierfield Coal and Iron Company, respectfully certify unto your honor that the organization of said company has been completed as provided for by section 1806 of Code of 1876 of the State of Alabama, and that there has been paid to the president of said company in cash at least 20 % of the capital subscribed and not less than 50 % of the $750,000.00 of the proposed capital stock of said company has 925 been subscribed by *bona fide* subscribers; and that, after due and legal notice had been given as was required by the order of your honor as evidenced by the certificates hereto attached marked Exhibit A and made part of this certificate, the books of subscription were opened at Brierfield on the 4th day of May, 1882.

All of which is respectfully certified and submitted to you honor as is by the statute in such cases provided.

Witness our hands this 4th day of May, 1882.

C. C. HUCKABEE.
THOS. J. PETER.
ROB'T L. McCALLEY.

EXHIBIT A.

(*Certificate of Bibb Blade, &c.*)

Notice is hereby given that a commission, constituting the undersigned a board of corporators under the name of Brierfield Coal and Iron Company, was issued by the Hon. Jno. S. Gardner, judge of probate of Bibb county, Ala., giving them authority to open books of subscription to the capital stock of the proposed company, and requiring them to give one week's notice by publication in the newspaper published in Bibb county, and by posting one written notice at the court-house door in said county of the time and place of opening books of subscription. Notice is therefore hereby given that said books will be opened at Brierfield in said county on the 4th day of May, 1882.

C. C. HUCKABEE.
THOS. J. PETER.
ROB'T L. McCALLEY.

STATE OF ALABAMA, }
County of Bibb. }

I, J. Madison Langston, one of the proprietors of the Bibb Blade,

hereby certify that the above notice was published in said
926 Bibb Blade one week in accordance with the requirements of the order made by Jno. S. Gardner, judge of probate.

Brierfield, Ala., 4th May, 1882.

J. M. LANGSTON,
Proprietor Bibb Blade.

It is therefore ordered by me, Jno. S. Gardner, probate judge of said county, that the certificates and exhibits be received and filed and spread upon the records of this court, and that said C. C. Huckabee, Thos. J. Peter, and Rob't L. McCalley be and are hereby organized under the laws of Alabama into a private corporation to be known as Brierfield Coal and Iron Co., and that certificate be issued to them by me as probate judge of said county certifying that they have been fully organized according to the laws of Alabama as a private corporation under the name and for the purposes indicated in their written declaration, and that they are fully authorized to commence business under their charter.

This 5th day of May, 1882.

JNO. S. GARDNER,
Judge of Probate Bibb County, Ala.

Q. Is this your signature here, Mr. Huckabee?

(Witness is shown paper signed by T. J. Peter, E. A. Peter, R. L. McCalley, C. C. Huckabee, G. I. Seney, C. S. Plumb, Plumb & Hood, and Justin S. Morrill, and copied in the testimony of Murray on page 31.)

A. Yes, sir.

Q. Mr. Huckabee, did you ever pay anything into this company except the $20,000.00 mentioned in the second paper of Exhibit 4?

A. No, sir.

Q. To whom did that $20,000.00 belong?

A. It belonged to myself and Mr. McCalley.

Q. In what proportion?

927 A. $15,000.00 to me & $5,000.00 to Mr. McCalley.

Q. After this paper of Apr. 24 was executed did you ever pay the $15,000 of this amount due you into that company or did you agree to take stock?

A. Agreed to take it in stock and bonds in lieu of money.

Q. In accordance with this agreement, copied on page 31, of Murray's testimony?

(Reads from testimony of Murray.)

A. Yes, sir.

Q. It appears that one thousand dollars has been stricken out in this agreement, copied on page 31 of Murray's testimony, and it appears that $900 in a different handwriting is written above it. What is your best recollection as to whether that was one thousand dollars or not?

A. My recollection is that it was written one thousand dollars at

the time I signed it. I don't recollect ever seeing the $900 before. It may have been, but I don't recollect it.

Q. Did you get any receipt for what you paid into that company?

A. Yes, sir.

Q. Have you that receipt?

A. Yes, sir. (Produces receipt.)

Q. Whose name is signed to it?

A. Mr. Peter's.

Q. Is that his handwriting? (Hands receipt to witness.)

A. Yes, sir.

Q. He was president of the company at that time?

A. Yes, sir.

(Receipt offered in evidence, marked Exhibit No. 5 by the master.)

Q. Did you afterward receive any bonds of that company?

A. Yes, sir.

Q. How many?

A. $15,000.00, received in this way: They paid me $13,000 in bonds, and the other $2,000 was settled by moneys advanced by the company, and which I owed the company on settlement.

Q. When did you receive those $13,000.00 of bonds?

928 A. It was after that suit was terminated. There was a suit involving the title to the property brought against the company which I had to defend, and the president of the company, Mr. Peter, would not hand me over my bonds and stock until the suit was settled. After the suit was compromised he handed me over my certificate of stock.

Q. Well, did you pay anything for those bonds at the time you received them?

A. I can't say that I did. I paid $15,000.00 for the bonds and stock in this way: I subscribed, as that book shows, for $15,000.00 of stock in accordance with that agreement, copied on page 31 of Murray's testimony, and then I was entitled to 15,000.00 in bonds. I hold the receipt for the stock paid up.

Q. Do you know what became of the $5,000 of Mr. McCalley; whether it was ever paid or not?

A. To the best of my knowledge, it was never paid; he just left it for safe keeping.

(Objected to by Gen'l Pettus.)

Q. Has the $15,000 which was credited to you in favor of the property of the Brierfield Coal & Iron Company ever been paid except in the way you have stated?

A. That is the only way it has been paid.

Q. Have you any knowledge as to sale of bonds of other people connected with this corporation?

A. I can't say that I have. Mr. Murray made me out a paper, on which he made a calculation of the interest that was due me, and said he wouldn't pay me any money, but would take that as a payment

on the stock, to which I objected. I went to Peter to get the interest that was due on the bonds. He would not pay me the interest, and claimed that there was something due on the stock.

929 He claimed that my stock had been assessed and retained the money that was due on the coupons. I claimed that my stock was fully paid up—had a receipt to that effect; think I have the statement now. There was several years' interest due on those bonds that had been kept there by the company, and then I owed on the compromise that had been made. A part of this interest money was taken to pay that, and the two thousand dollars of bonds was taken to pay up the compromise and the expenses, and then there was a balance of two thousand dollars that would have been due me. Murray contended that he considered that subject of assessment, and I contending that I had paid it.

Q. What did you do with your bonds?

A. I sold them to Mr. Fitzgerald—James T. Fitzgerald.

Q. Did Fitzgerald have any knowledge of how you were paying these bonds?

A. Yes, sir; I told him.

Q. Did he have any knowledge of how these bonds were issued?

A. Yes, sir; I explained to him—told him how the bonds were issued. Fitzgerald proposed to buy the bonds, and he asked me the particulars about it, & I told him I had taken 15,000.00 of stock in the Brierfield Coal & Iron Company, and these were the first-mortgage bonds, and I let him have $13,000 in bonds. I explained everything to him.

Q. Did Mr. Fitzgerald ever tell you anything about his knowledge of the bonds?

A. Yes, sir; he has told me he knew the bonds were gotten $15,000 in bonds and $15,000 of stock.

(Objected to by Gen'l Pettus as irrelevant—objects to the statement as to what Fitzgerald knew.)

Cross-examination by Gen'l PETTUS:

930 Q. Mr. Huckabee, you read some agreements here this morning. Did you ever pay the Brierfield Coal & Iron Company any money of any sort and in any way? I am not talking about property.

A. I paid no money. I sold them property and the company owed me cash money. I sold the property in favor of Mr. Peter, and made the conveyance to the company in May. Instead of making the deed spoken of to Mr. Peter, I made it to the Brierfield Coal & Iron Company. The company didn't pay me. The $25,000.00 that I got Mr. Peter paid me.

Q. Well, then, you actually paid no money at all to the Brierfield Coal and Iron Company, except in the shape of this deed to the land, either for your stock or your bonds?

A. Mr. Peter owed me money and paid it for me——

Q. You say Mr. Peter bought some property from you and paid you in all about $20,000?

A. Yes, sir; he owed me—owed me about $15,000, and Mr. McCalley $5,000.

Q. What did Mr. Peter do with that money?

A. You see, when I subscribed to the capital stock of the company Mr. Peter was to pay the money, and did pay it. He gave me credit for it as having paid it on the 8th of May, 1882.

Q. Do you say that Mr. Peter paid that money then?

A. I have always believed that he did. I never saw him pay it. I took it for granted that he paid it. To the best of my knowledge and belief, he paid it. There is his receipt for the money.

Q. I asked you if Mr. Peter ever paid for you any money to the company—any part of this $20,000?

A. Well, I go by that receipt there.

Q. Hadn't you better go by this contract also?

A. I go by what Mr. Peter says in that receipt. He says
931 he has received it. I never paid it in any other way. The only way was through Mr. Peter. I never received any certificate of stock. I got the bonds after the law suit was decided.

By Mr. THORINGTON:

Q. You were a director in the company at the time of the organization?

A. Yes, sir.

Q. And continued how long?

A. Have continued as such up to the present; I participated in the meetings of the directory most of the time.

Q. You were familiar with the condition of the company?

A. I don't know that I was very familiar.

Q. Did you know it was in need of money—didn't you know all along that the company was needing money, and had no other way of getting it except by assessing the stock?

A. Of course it was expected all along that the stockholders would pay up their assessments upon the stock; I didn't know how much of the stock was paid up, and I don't know who had paid up and who hadn't.

Q. You are familiar with the resolution under which the bonds and stock were issued?

A. I don't know that I ever saw it, but I know that was the understanding; I signed that agreement.

Q. You knew all along that, notwithstanding that agreement, that an assessment would be made on the stock?

A. No, sir.

Q. Mr. Huckabee, did you know of any payments having been made on stock except payments under calls made by the company?

A. I know that so far as my stock is concerned it was paid, as shown by my testimony in the examination in chief this morning, and not otherwise.

Q. Were you present, Mr. Huckabee, at meetings of the
932 directors when the calls were made?

A. Yes, sir.

Q. Do you recollect how many calls were made?

A. I do not.

Q. Did you at any of those meetings insist that your stock was not subject to calls?

A. I don't know that I did; I didn't know that it was necessary for me to do it.

Q. When was it that Murray retained that $2,166?

A. I don't recollect what time it was; it was in Feb., 1886, I had the settlement with Mr. Murray; I suppose that was the time; I couldn't swear positively.

Offer in evidence the minutes of the directors' meeting July 9, 1884, on page 26 of the record of the proceedings, which reads as follows:

Office Brierfield Coal & Iron Co.

BRIERFIELD, ALABAMA, *July* 9, 1884.

A meeting of the directors of this company was held here to-day pursuant to a call of the president. There were present C. C. Huckabee, Thos. J. Peter, and John G. Murray. The following motion was made, seconded, and unanimously carried: Resolved, That an assessment of 20% upon the stock of the company be levied, payable at the office of the company in Brierfield as follows: 10% payable Aug. 1, 1884; 5% payable Oct. 1, 1884; 2% payable January 1, 1885, and 3% payable April 1, 1885. The board then adjourned, to meet at call of the president.

T. J. PETER, *Pres't.*

JNO. G. MURRAY, *Sec'y.*

Q. At the time of this settlement—Feb., 1886—you knew that calls had been made on the stock of the company?

A. Yes, sir.

Q. Do you recollect, more particularly than you have testified, what — the character of that statement as to $2,166.00?

933 A. No, sir; it was a settlement, and my recollection is that he carried out the interest, and that there was that amount due me, which he wanted to apply to my assessment on stock.

Q. State whether or not the receipt or paper or statement Murray gave you on the settlement in Feb., 1886, shows on its face that $2,166, or about that amount, which would have been due to you on that settlement, had been applied by the company as a payment on your stock under a call or calls made by the directors.

A. I can't recollect positively what the paper does state.

Q. Didn't it make that impression on your mind at that time?

A. As a matter of course he kept it there for that purpose. It was held for that purpose and I so understood it, but I claimed at the time that my stock was fully paid up. I told Mr. Murray time and again that I had this receipt, and he said he never had seen it and thought I was mistaken.

Q. Did you ever make any demand on the company for that money?

A. No, sir; I don't think I did.

Q. Do you know the terms on which the other stockholders of this company got their stock and bonds?

A. I do not.

Q. Do you know what their bonds cost them?

A. I knew, as a director, they had to pay 20% on the stock whenever Mr. Peter requested it and the directors made a call for it. I don't know that the other stockholders paid 90c. on the dollar for their bonds. I don't know how much money they paid. Mr. Peter got it.

Q. Don't you know that they got money for those bonds?

A. No, sir; I don't, of my own knowledge. I don't know that a dollar had been paid on the bonds by the other bondholders. I knew the company borrowed money and thought they were
934 getting money on the stock assessments. I knew that mortgages were made.

Q. You knew that there was a good deal more than 375 thousand dollars put in the property, didn't you?

A. I didn't know how much was put in.

Q. You didn't know that a dollar had been paid for the stock by the stockholders?

A. No, sir; I never examined the books to see what had been done with any sort of particularity. I subscribed upon the same terms and conditions that the other subscribers did, and I never took any pains to ascertain upon what terms they did subscribe.

By Mr. WATTS:

Q. You don't know of any other agreement to subscribe for bonds and stock than that shown on page 31 of Murray's testimony?

A. No, sir; I have no reason to believe that the erasure in that agreement was made, for I never saw it before. I am not able to say that the erasure was made before I signed it. I don't know anything about it.

Mr. Watts introduced in evidence deed of C. C. Huckabee to the Brierfield Coal and Iron Company, marked Exhibit No. 6 by the master.

C. C. HUCKABEE was then called and re-examined in his own behalf.

Examination by Mr. WATTS:

Q. Mr. Huckabee, will you state whether or not these 2 papers, Exhibits 11 & 12, were delivered to you at the same time? (Hands papers to witness.)

A. My recollection is they were not.

Q. If either of the papers was delivered to you and the other not state which was delivered and which was not.

935 A. The paper No. 11 was, I think, at the settlement that we had up there, and my recollection is that Mr. Murray sent me this No. 12 by mail afterwards.

Q. This paper, No. 11, was delivered to you when you got your bonds, wasn't it?

A. Yes, sir.

Q. Now, Mr. Huckabee, did you have any conversation with Mr. Murray at or about the time the bonds were delivered to you about any stock assessment? And, if so, state what it was.

A. We had a conversation. We first had the conversation at Mr. Peter's room. I went to Mr. Peter to get the bonds. We had agreed that if I would compromise a suit in reference to the land which I and Mr. McCalley had sold to the company that he would turn me over my bonds while this suit was pending — the company. Mr. Peter held my interest in Brierfield to indemnify them against the suit, and there was a proposition to compromise. Mr. Peter agreed with me that if I would agree to pay it that he would turn me over my bonds. I went up to get them. I made a demand for my bonds, stock, and all. Mr. Peter stated that he would turn over my bonds to me, but that — owed money to the company, as this account, Exhibit 11, shows, and that he would hold coupons enough to pay that. There had been assessments made on the stock, and that he would hold that, as I had never responded to the calls for assessments. I objected to paying the assessment; always had objected to it. I claimed that my stock was paid-up stock. It was claimed by Murray & Peter then that I had no paper showing that it was paid up. The truth of it was my paper was mislaid—
936 I mean the receipt for $15,000.00, Exhibit No. 5. I stated that my stock was paid-up stock, and Mr. Murray and Mr. Peter claimed that I had no paper showing it. When I went home I searched through my papers & found the receipt—Exhibit 5. Then Mr. Peter instructed Mr. Murray to hand me my bonds, but retained the coupons to pay my indebtedness, saying I had paid no assessments on the stock. The next day I went to Mr. Murray's office, and he made out the statement of my account—statement of what I owed. There was some $2,166.00 still due after paying Exhibit No. 11. Mr. Murray kept that as an assessment on my stock, and he claimed that there was an assessment on the whole of it. I refused paying, stating that I had paid it once & couldn't pay any more—wouldn't pay it.

Q. Was there anything else said?

A. I made no agreement whatever with any one to surrender my stock. I claimed all the while that it was paid-up stock, as Exhibit 5 shows.

Q. Now, Mr. Huckabee, did you in that conversation with Mr. Murray tell him that you were not in a case financially to pay the assessments?

A. No, sir; I don't recollect that expression, but I told him that I had no $15,000.00 to pay; that I had paid it once and wouldn't pay it again.

Q. Was anything said by Mr. Murray to you in that conversation about 57% assessment or 77% assessment?

A. Yes, sir; I knew that assessments had been made all along, but had refused to pay them, claiming that mine had been paid at that time. I don't think that but 57% had been called for.

Q. Did you propose to Mr. Murray in that or any conversa-
937 tion that your stock should be reduced to such an amount as would enable you to pay the 57 per cent. on the amount to which it was reduced with this $2,166.00?

A. No, sir; I didn't propose to reduce my stock; never have agreed to reduce it — all.

Q. Was this statement, No. 12, made out at that time and shown to you?

A. I don't recollect that it was. I recollect that Mr. Murray said that that would pay 57% on some 38 or 40 shares.

Q. Did you agree to it being applied that way?

A. No, sir; I had no agreement about it. They had the money and wouldn't pay it to me any other way.

Q. Did you agree to its being paid that way?

A. No, sir; I just left it there with them.

Q. Subsequent to that time Exhibit 12 was sent to you by mail?

A. Yes, sir.

Q. Did you in that conversation with Mr. Murray promise to pay him the balance of the 20% assessment on the 38 shares?

A. I have no recollection of promising to pay any assessment.

Q. Do you say that you promised or did not promise?

A. I did not promise him.

Q. You didn't promise to pay the 20% balance on the 38 shares, either before or after those bonds were delivered to you?

A. No; never have agreed to reduce it.

Q. Did you agree that your coupons then due should be applied to the payment of 57% on 38 shares of stock or on any shares of stock?

A. Well, Mr. Peter had it all in his hands, and it was retained there, not with my consent, to pay the call—the assessment. I demanded the money at that time and they refused to pay it.

Q. Did you accept the receipt, Exhibit 12, as a part payment
938 for an assessment of 77% and agree to pay the balance in a very short time?

A. No, sir.

Q. Did you at any time after receiving your bonds in the office of of Mr. Murray, at Brierfield, request him to give you a stock certificate for the amount of the assessment you had paid, to wit, on 38 shares, as mentioned in Exhibit 12?

A. No, sir; I have no recollection of it—not for that amount. I went to Mr. Murray's office and asked him for my stock, and he refused. I stated to him then that I had a receipt for paid-up stock, and he denied it; said he had no knowledge of any such receipt having been issued; that I was mistaken. I assured him I was not. He refused to give me the stock.

Q. In that same conversation or any conversation did Mr. Murray refuse to give you the stock certificate until you had paid the 20% balance which he alleged you had promised to pay on 38 shares?

A. No, sir; he never refused to give it on that ground.

Q. Did you at that time or at any other time promise to pay the balance referred to?

A. Never have promised to pay any assessment on the stock.

Q. Mr. Huckabee, did you write to Mr. Murray or the Brierfield Company or any officer of that company requesting that a stock certificate be sent you for the amount of stock on which you had paid the assessment?

A. I have no recollection of writing for the amount of stock on which I paid the assessments. I wrote to him for $2,000.00, if they would let me have it, for a special purpose.

Q. Was that before or after this letter? (Hands witness letter, Exhibit 7.)

A. I don't recollect.

Q. It is not this letter, is it?

A. I don't think so. The reason why I doubt it is this letter is because my recollection is I wrote for $2,000, and this asks
939 for one thousand. I don't recollect writing but once.

Q. Mr. Huckabee, about 6 months after the settlement shown by Exhibit 11 was made did you have a conversation with Mr. Murray in his office in which you asked him to give you a certificate for 38 shares of stock on which 57% assessments had been paid, and did you at this time promise to pay the 20% of the assessment on 38 shares?

A. I have no recollection of making such a demand as that. Some time after the settlement I went to Mr. Murray's office and stated to him that I had my receipt (Exhibit 5) for stock paid up in full and asked him then for my stock and he refused, stating that he had no recollection of such a receipt, and refused to give me my stock.

By Col. THORINGTON:

Q. Col. Huckabee, was there nothing whatever said in the conversation between you and Mr. Murray at the time of the settlement about your stock being reduced?

A. I have no recollection that there was, sir.

Q. Do you say positively that there was not?

A. We may have talked about my having to reduce it, but I made no agreement.

Q. Don't you know that it was talked about?

A. I don't, though it may have been, because I objected to paying the call.

Q. Will you explain, then, why it was that you took 13 bonds instead of 15?

A. I owed the company. Mr. Peter had advanced money to pay costs, &c., & it took 2 bonds to pay my indebtedness, and there was that amount left.

Q. If there was no agreement about your paying the assessments why didn't you use your coupons in paying your debt and then demand the full amount of your bonds?

940 A. Demanding done no good; they had it all in their hands; had it all their own way, and the coupons wouldn't pay all I owed.

Q. You accepted the 13 bonds knowing that the coupons had been retained and applied to the assessment?

A. Yes, sir.

Q. When you wrote for the stock was it before or after that settlement had been made between you and Mr. Murray?

A. It was after.

Q. Then this letter (Exhibit 17) was written after your settlement, was it?

A. Yes, sir.

Q. Will you please state what amount of stock you made the demand for when you did make the demand?

A. I asked Mr. Peter for the stock and bonds that were due me.

Q. Did you specify any amount of stock that you demanded?

A. Fifteen thousand dollars I claimed I had paid up.

Q. What am't of stock did you demand?

A. I don't know that I made a demand for any special amount. My recollection is I wanted $2,000.00 and asked Mr. Murray if he would issue my stock; he said he would not.

Q. You didn't specify what amount you wanted?

A. I am not positive.

Q. Those are the only times you made a specific demand?

A. I wanted all my stock and told Mr. Murray I had a receipt for it paid up in full, and he refused to give it to me; denied that such a receipt was in existence.

W. D. CARTER, a witness for the respondents, — was then introduced, sworn, and examined, says:

Examination by Mr. WILEY:

At the time my brother and myself sold the Bibb Furnace property to the Brierfield Coal & Iron Co. or to Mr. Peter for said company we were living at Bibb Furnace, in Bibb county, Ala-
941 bama, and were engaged in the business of making pig-iron. Kearsley Carter, Jr., is my brother's name. We were engaged in general business, had a store, and were manufacturing pig-iron. We were carrying on business under the name of Bibb Furnace Co., as partners. We held everything as partners. We were partners all the way through. We held the goods, wares, and merchandise in the store at the Bibb Furnace and the property and lands that were sold to Mr. Peter for the Brierfield Coal & Iron Co. as partners. We held everything as partners. We were generally engaged in business and were equal partners. The debt due us was a partnership asset. The notes were made payable to W. D. & K. Carter, Jr. My brother and myself had a partial settlement of partnership business about a year and half ago. That was before supplementary bill in this case was filed. We have never had a final settlement. At the time of the partial settlement I owed my brother between four and five thousand dollars. I think in a final settlement I will owe my brother in the neighborhood of $5,000.00. There was a balance of $5,800 or $5,900, including interest to date, due on purchase-money account of property sale by K. Carter, Jr.,

and myself to the Brierfield Coal & Iron Co. About $1,500.00 of that amount was held back by Mr. Peter on account of claim attacking title to forty acres of land. It was done under the land contract. I have transferred all my interest in the notes and in this balance due under the contract from the Brierfield Coal & Iron Co. in this partial settlement that I had with my brother to K. Carter, Jr.

Cross-examination by W. S. THORINGTON, Esq.:

We acquired the property by purchase. The deed was made to W. D. Carter. The purchase-money was one-half K. Carter, Jr.'s. The purchase-money was paid at different times. I bought
942 in first, and the deed was made in my name. My brother afterwards came in and paid in one-half of money. I have never made a deed to him. The legal title was in me when I sold to the Brierfield Coal & Iron Co. They did not buy for cash; they paid part cash, part on time. The debts of the Bibb Furnace Co. were paid with the cash received. We never divided the notes. The only division we had was at the time of the partial settlement before mentioned. The best of my recollection is that K. Carter, Jr., had possession of the notes up to that time, and at the time we had this partial settlement I transferred my interest in the notes to him, and he has retained possession of the notes since. We began business under the name of the Bibb Furnace Co, I think, in 1881 or 1882. We never published any notice that we had formed a partnership under the name of the Bibb Furnace Co. There was a written agreement of partnership between myself and A. K. Sheppard, Jr. My brother bought Sheppard's interest. Sheppard retired, and the business was then run by myself and brother. The original agreement was lost. The agreement was an ordinary agreement. The terms of the agreement made us equal partners. We agreed that we would carry on the iron business as partners; that each would sign the firm name; that each would draw a fixed salary for services, and remember that we specified that in case of the death of either the other should have full authority to straighten up the affairs of the partnership. We specified in the agreement that we should use the name of the Bibb Iron Works Co. My brother came in the last of 1881 or the first of 1882. I don't remember the date. My brother came in under the same agreement. He paid in $10,000.00 at the start, I think it was.
943 My brother took Sheppard's interest in the property. Part of the $10,000 went to buy Sheppard's interest. The balance went to square his capital account with mine, which at that time was greater than his. I had more money in the business than Sheppard did when he (Sheppard) went out. We did not advertise the change in partnership. We carried on a commissary store. We manufactured pig-iron in connection under the name of the Bibb Iron Works Co. We used the name of W. D. & K. Carter, Jr., sometimes. I cannot specify any particular times that we used that name. It was in the spring of 1887 that my brother and I had the

partial settlement. In that settlement my brother took all the notes that were then unpaid. I transferred my interest in the notes and the balance due under the contract of purchase in the spring of 1887. That transfer was made in writing on a separate paper, and I endorsed 4 — the notes also. The paper is in my brother's possession. I think he has it in a safe in the court-house in Selma. I did not retain any interest in the partnership effects after *after* that transfer. I call it a partial settlement because I will owe him more than that amount, which was not at that time accurately stated. I came up by Selma yesterday and tried to get it. I applied to his attorney, Judge Craig, there for it. He told me that my brother's papers were in his (my brother's) box in a safe at the Selma court-house, and that he (my brother) had the key with him. My brother is in New England, but I don't know exactly the point. I am a married man. I never transferred any of these notes to my wife. They never were transferred to my wife. I don't think they were, any of them.

Q. What property have you?

944 Objected to by Mr. Thorington, but objection waived by witness.

A. I own stock in the Brierfield saw-mill—about $6,300.00. I have sold ten shares of said stock since my purchase thereof at 20%. This concern is not in operation. I own some lots in Brierfield. I have three in my own right, and I own an undivided interest in a number of other lots. All are vacant. Some sold for a little over $300.00 about a year ago. They have not been selling since the suspension of the company at any price. I have a deed for the lots. I have a few notes. Some of them are past due and some are not due. They amount to between four and five hundred dollars. I have some personal property. I don't know whether you want a schedule or not. I have a horse or two, some vehicles, a log outfit, and some uncollected accounts. If my property was sold out to-day, I don't know whether it would pay out or not. My interests in Brierfield are about like the Brierfield Company's. The Bibb Iron Works Co. was not an incorporated company. We did undertake to form a corporation under the name and style of the Bibb Furnace Co., but was never completed. I owe other debts besides $5,000.00 to my brother. I have mortgages on the property I specified, a mortgage of between $800 and $1,000.00 on log equipments, and a mortgage, originally for $1,800.00, now about $400.00, on log machine. There is no mortgage on lots. There are three or four unsatisfied judgements against me, amounting to $800.00, I reckon. They are in Bibb county. My brother has security for my indebtedness to him. He has the endorsement of my wife on my note.

945 We did not make the note in the settlement, but I borrowed the money from him afterwards. I mean that my brother has my wife's endorsement for money borrowed from him, but it was not included in the balance due to him in the partnership settlement. For that balance he has no security. He has no writing from me except the transfer at the time of partial settlement. My brother and myself are not now in partnership. He

went into business in one place and I in another in 1883. At the partial settlement the firm had no assets except the money due from the Brierfield Coal & Iron Co. All the other assets were sold to the Brierfield Coal & Iron Co., including the store and everything in the deed.

Redirect examination by Mr. WILEY:

My brother was living at Bibb Furnace, and was actively engaged in conducting business at the time of sale to the Coal & Iron Co. He lived there from the time he bought out Sheppard's interest. My brother and myself obtained the money with which we purchased the Bibb Furnace property from our grandfather, Geo. L. Douglass, of Louisville, Ky. It was a gift from him.

Complainants reserve the right to offer rebutting testimony in regard to matters testified to by Mr. Carter at a future day.

The master then adjourned the reference to Tuesday, August 7, 1888, a 10 o'clock a. m.

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

W. L. CHAMBERS, Trustee,
vs.
THE BRIERFIELD COAL AND IRON COMPANY and Others.

K. CARTER, Junior, a witness on behalf of W. D. & K. Carter, Junior, being by me duly sworn to speak the whole truth
946 and nothing but the truth, doth depose and say as follows:

I knew a firm called W. D. & K. Carter, Junior; that firm did business in Bibb county, Alabama, and the members of that copartnership were W. D. Carter and K. Carter, Junior.

Up to the time of the sale to the Brierfield Coal and Iron Company of their property, said W. D. and K. Carter, Junior, did business in Bibb county, Alabama, under the name of the Bibb Furnace Company, and was engaged in making pig-iron and running a general country store and commissary for their business, and were carrying on all of said business as partners under the name of the Bibb Furnace Company. In the original purchase by W. D. Carter and K. Carter, Junior, of the property so held by them, each of said parties paid one-half of the purchase-money and each under the agreement between them were entitled to one-half of the profits of said business and was responsible for one-half of the losses of in said business; but the title to the property was taken in the name of W. D. Carter and was so held until the sale to the defendants on 9th June, 1883.

The defendants bought the property from my brother, W. D. Carter and myself, which I refer to as the Bibb Furnance Company property, paying a part in cash and giving notes secured by a mortgage for the balance of the purchase-money. These notes and this

mortgage was taken in the name of W. D. & K. Carter, Junior, and made payable to them. At the time of the sale my brother, W. D. Carter, owed me one thousand dollars, and in the spring of 1887 he owed me between five and six thousand dollars, and being
947 unable to pay it, he transferred and assigned his interest in said notes and mortgage, and conveyed his interest in said property to me in payment of said indebtedness. These notes and mortgage, for the purchase money, have never been entirely paid, there being due on them now, at the time of making my answer to these interrogatories, seventy-two hundred and sixty-two and $\frac{16}{100}$ dollars. The said interest purchased from W. D. Carter by me has since that time been transferred and sold by me, for a valuable consideration, to Lillian A. Carter, of Selma, Alabama, and is now her property. We did some business, as before stated, under the name of W. D. & K. Carter, Junior, but this was after the sale to the defendants in this case, and we used the same on our papers frequently when we were doing the Bibb Furnace Company business.

We never had a final settlement of our partnership business. We did have a partial settlement a year and a half or two years ago, and before the supplementary bill was filed in this case, according to my best recollection. T. J. Peter, as the manager and agent of the defendant, has often, and ever since said sale and transfer by my brother, W. D. Carter, to me, been notified of my ownership and property in said notes and mortgage, and been asked & notified to pay the same to me. His excuse, as I understand now, for not doing it, is that he claims that W. D. Carter owes him or the company some money, and that I ought to pay W. D. Carter's debts.

W. D. & K. Carter, Jr., gave a warranty deed to the defendants of the lands that he is holding, the $1,400.00, back on. Two of the garnishments referred to by the defendants were, to my own
948 certain knowledge, dismissed out of court 18 months or two years ago, and my best recollection is that the other one is in the same condition, though of this I am not so certain. The money so due is the purchase-money, with the interest added, of the property so purchased, according to agreement. The way I arrived at the amount which I say is due on said indebtedness is as follows: Taking the four accounts held out and retained by said Co. on account of said garnishments and said land matter, which are the only amounts not paid, and calculating the interest on them at 6 per cent. from the 9th day of June, 1883, to the 9 day of July, 1887, and 8 *per cent.* thereon from said last-named date to this 25 day of February, 1889, I arrive at the exact amount stated in my testimony. The garnishment referred to as the Fancher garnishment was for an individual debt of W. D. Carter, in which I had no interest, and the said company was garnisheed as debter to W. D. Carter, and not as to me or the firm of W. D. & K. Carter, Jr., or of the Bibb Furnace Co. The Fitch garnishment and the Spencer garnishment have both long since been dismissed, as I have already stated.

K. CARTER, JR.

Sworn to & subscribed before me on this the 25th day of February, 1889.

JOHN W. MABRY,
Notary Public, Dallas County, Alabama.

We consent that the within may be taken as the testimony
949 in chief of K. Carter, Jr., in said cause, but we reserve the right to cross-examine him, and the within is not to be used as testimony until the witness is so cross-examined. After such cross-examination the testimony as a whole may be used.
M'ch 21, '89.

THORINGTON & SMITH,
For Trustee.

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

W. L. CHAMBERS, Trustee,
vs.
THE BRIERFIELD COAL & IRON COMPANY & Other-.

Comes B. H. CRAIG, a witness examined by and in behalf of Lillian A. Carter, claimant, who, being by me first duly sworn, on oath deposes & says as follows, to wit:

I am now and was on the 16th day of March, 1888, a practicing attorney in the city of Selma, in said State, and was then & am now a member of the firm of Craig & Craig.

That said firm, as att'ys and agents of said Lillian A. Carter, came into possession of a check or draft for about $1,700, payable to Lillian A. Carter's order, which check or draft purported to be a part of the distributive share of said Lillian A. Carter in her father's estate, but witness was then informed the said draft & the sum of about $1,800 in cash was so described by said Lillian A. Carter as a part of said distributive interest in said estate, and at her request & as her attorney- we prepared & K. Carter, Jr., executed a transfer, a copy of which is hereto attached, marked Exhibit A, in consideration of the paym't to him, said K. Carter, Jr., said sum of $3,500.

Cross-examination by Mr. THORINGTON:

950 Q. Mr. Carter, from whom did you and your brother obtain the land you conveyed to the Brierfield Coal & Iron Company?
A. From C. C. Huckabee.
Q. To whom was the deed made?
A. W. D. Carter.
Q. Did the deed specify your interest in the property?
A. No, sir; it did not.
Q. Did W. D. Carter convey any part of the property to you?
A. No; he did not.

Q. The legal title remained in W. D. Carter up to the time the property was conveyed to the Brierfield Coal & Iron Company?

A. Yes, sir; it did.

Q. W. D. Carter up to the time the property was sold to the Brierfield Coal & Iron Company held the title of it for himself and yourself, did he?

A. Yes, sir.

Q. What was your interest in the land? What was your interest at the time it was conveyed to W. D. Carter?

A. The very day it was conveyed to him I had no interest in it. W. D. Carter paid the balance of the money then, and I came in and paid one-half—enough over to make one-half—of the first purchase.

Q. You paid one-half, then, of the first purchase and he paid one-half?

A. Yes, sir.

Q. Did you have any written agreement with him at the time as to your part of the purchase-money?

A. Not that I recollect of. At the time I paid one-half of the purchase-money I was then a minor.

Q. You never had any written evidence from your brother showing your half interest in the property?

A. Well, I had letters and admissions showing that I had an undivided half interest in the property, but there was no formal contract until the sale was made to the Brierfield Coal & Iron Company.

Q. Who has the original contract made between you and
951 your brother and the Brierfield Coal & Iron Company?

A. I do not know, sir, where that original contract is.

Q. That contract you had showed your half interest in the property, did it not?

A. That contract was signed by the Bibb Furnace Company, W. D. & K. Carter, Jr., and the Brierfield Coal & Iron Company, by T. J. Peter, president.

Q. Who is the Bibb Furnace Company?

A. W. D. & K. Carter, Jr.

Q. You undertook to organize that as a corporation, did you?

A. At one time we did.

Q. And under that name acted as a corporation?

A. No; didn't act as a corporation, but did business under that name, but had no corporation.

Q. Did you have any officers?

A. When we were first organized we had officers, but they never acted.

Q. You went through the form of organization, didn't you?

A. Partly. I don't know enough about it to say how much we did do, but we did not go entirely through.

Q. Were any notes made by the Brierfield Coal & Iron Company for part purchase-money?

A. Yes, sir.

Q. Any cash paid?

A. Yes, sir.

Q. To whom was the cash paid?
A. W. D. & K. Carter, Jr.
Q. To whom were the notes given?
A. Notes were made and given to W. D. & K. Carter, Jr.
Q. Who took charge of the notes after delivery?
A. I had charge of them most all of the time.
Q. Did you have them all?
A. Yes; at one time, and then W. D. part of the time. I mean the possession of them only.
Q. How many did you have and how many did he have?
A. I don't know. When I say that he had — part of the time I mean that he had them when I was away and that I had them when he was away, and when I was away sometimes he would have them. Most of the time they were in the vault.

952 Q. Did you examine this agreement attached to the supplemental bill of complaint?
A. Yes, sir.
Q. That is substantially a copy of the original, is it?
A. Yes, sir.
Q. Were you examined as a witness in any garnishment case in which one Fancher was complainant in the Bibb circuit court?
A. No, sir.
Q. Was you brother examined in any case of that sort?
A. Not to my knowledge.
Q. Do you remember you and your brother defending a garnishment case over there on the ground that you and he were not partners?
A. I and he not partners?
Q. Yes.
A. No, sir; I do not.
Q. Do you remember a defense of that sort?
A. No, sir; I do not.
Q. Do you remember that defense being set up in a case in the Bibb courts where the Bibb Furnace Company was sued and you and your brother were sued under that name?
A. No, sir.
Q. Neither you nor he, then, have ever defended a suit in the Bibb county court, a garnishment suit, on the ground that you and he were not partners?
A. I have not.
Q. Do you know of his having done so?
A. Never, to my knowledge, has any such point been made.
Q. Were you and he ever sued under the name of the Bibb Furnace Company?
A. Yes, sir; several cases.
Q. You did not set up that you were not partners?
A. Not to my knowledge.
Q. What became of these notes that were given by the Brierfield Coal & Iron Company under this agreement, a copy of which is attached to the bill of complaint?

953 A. Some were paid at that time and some were not, and some we had to collect by process of law.

Q. What became of the notes that were not paid?

A. They were collected after a time by legal means. We had to pay out considerable money to have some of them collected.

Q. Have all of them been paid?

A. Yes, sir. Those notes have all been paid.

Q. Who were they paid to?

A. The majority were paid to—those last notes in that agreement and acceptances were put off thirty days—most to me and some to W. D. No; they didn't pay anything to W. D. I think I collected all of the money on those notes.

Q. What was the business of W. D. & K. Carter, Jr.?

A. We run a furnace and store and general merchandise business, making and manufacturing pig-iron.

Q. Have the affairs of that firm been settled up?

A. I think they are all settled.

Q. When did you have the settlement?

A. Some at the time of the sale and some from time to time since.

Q. In your examination-in-chief you stated that at the time of the sale your brother owed you one thousand dollars, and in the spring between five and six thousand dollars?

A. Yes, sir.

Q. What was the consideration of that indebtedness?

A. On which he got it?

Q. Yes, sir.

A. It was borrowed money which he got at different times; drafts that he had drawn, paper I had paid.

Q. You paid for the firm?

A. For him individually; nothing to do with the firm.

Q. Did you have any note from him?

A. No, except the paper I paid. I had some notes of his, some sight drafts, paper for ten days or something like that. I
954 kept no strict account with him. He would come in and get one, two, or three hundred dollars or wire me or write to me to deposit a certain amount in the bank or to send it to him by express, and one way and another.

Q. In the spring of 1887 he owed to you as much as six or seven thousand dollars?

A. Between five and six thousand dollars.

Q. At the time of the sale he owed you a thousand?

A. Yes, sir.

Q. In the spring between five and six thousand dollars, including that thousand?

A. Yes, sir.

Q. How many of the purchase-money notes for the land did he transfer to you in payment of that indebtedness?

A. He transferred the balance due in the spring of 1887 by the Brierfield Coal & Iron Company; his half interest in that.

Q. He transferred that to you in full satisfaction of what he owed you?

A. No; not in full, but as far as that would go.

Q. The transfer, then, was intended as a security for what he owed you?

A. Intended as a payment as far as it would go.

Q. How far would that go?

A. Half of what was due by the Brierfield Coal & Iron Company his interest in that note about cover; the note was for thirteen thousand dollars; that about covered it.

Q. Was that agreement in writing?

A. Yes, sir.

Q. Have you got possession of that?

A. Yes, sir. They transferred the mortgage to me that the Brierfield Coal & Iron Company made.

Q. Have you that agreement with you?

A. Yes, sir.

Q. I would like to look at it. When was this paper executed?

A. I don't recollect; in the spring—about the time of——

Q. It is dated the 7th day of March, 1887. Is that the time it was executed?

A. Yes, sir.

955 Q. Do you know of any indebtedness of your brother, W. D. Carter, in favor of the Brierfield Coal & Iron Company that was in existence at that time?

A. No, sir; I do not.

Q. Were these notes in your possession at the time this agreement was made?

A. Only one—there was only one note then. It was in my possession.

Q. Have you made any transfer or disposition of that interest bought from your brother?

A. Yes, sir.

Q. State to whom and when you made it.

A. To Mrs. Lillian A. Carter.

Q. Your wife?

A. Yes, sir.

Q. Did you sell her also your interest in the notes?

A. I sold everything. My interest of what I acquired from my brother, too.

Q. What was the consideration of that sale?

A. She paid the money for it. She paid cash. My wife's father, Judge George W. Prigmore, died some time in 1887. She received from her father's estate thirty-five hundred dollars, which money I appropriated and used, and I transferred and assigned my interest in the Brierfield property and the interest which I acquired from my brother, as evidenced by said notes—transferred and assigned to my wife, Lillian A. Carter, to repay her the money I had thus appropriated and used.

Q. Did you transfer the paper to her in writing?

A. Yes, sir.

Q. Was no part of that money ever repaid?

A. No, sir.

Q. Before this transaction?
A. No, sir.
Q. Does she still own the balance due on these papers?
A. Yes, sir.
Q. What property does W. D. Carter own now?
A. I do not know, sir.
Q. You know that he is insolvent, don't you?
A. I don't know anything about his business. I don't see him half a dozen times in a year.
Q. You don't know of any property he owns?
A. I do not.
956 Q. Is he in business now?
A. I don't think he is doing anything at all.
Q. Do you know of any execution issued against him being returned "no property?"
A. No, sir.

Redirect examination by Mr. WILEY:

Q. Mr. Carter, look upon the papers handed you, marked Exhibit 1 (which the commissioner hereto attaches as a part of the deposition of this witness), and state what it is.
A. That is a mortgage to the Brierfield Coal & Iron Company from W. D. & K. Carter, Jr.
Q. Is that the mortgage given to secure the unpaid purchase-money notes?
A. Yes, sir.
Q. Given for the purchase of the Brierfield property?
A. Yes.
Q. Look at the end of that instrument, at the transfer made thereon, and state what that is.
A. That is a transfer to Mrs. Lillian A. Carter of the mortgage and the balance due thereon.
Q. Is that the transfer that you have been testifying about?
A. Yes, sir.
Q. Which was given by you to secure the money which you appropriated and used of your wife?
A. Yes, sir.

The commissioner attaches said transfer, marked Exhibit 2, hereto as a part of the deposition of the witness.

Q. Look at this paper, marked Exhibit 3, and state what that is.
A. A transfer of W. D. Carter of his interest to K. Carter, Jr.

The commissioner attaches this paper, marked Exhibit 3, as a part of the deposition of the witness.

Q. Look at this paper handed you, marked Exhibit 4, and state what that is.
A. That is notice to T. J. Peter, president of the Brierfield Coal & Iron Company, of the transfer, dated July 28, 1887, of the in-
957 terest of W. D. Carter to K. Carter, Jr., in the mortgage.

The commissioner marks said paper Exhibit 4 and attaches it as a part of the deposition of this witness.

Counsel for W. D. & K. Carter, Jr., offer said Exhibits Number 1, 2, 3, and 4 in evidence as a part of the deposition of the said witness, K. Carter, Jr., and as evidence for said defendants in said cause.

Q. From whom, Mr. Carter, did you and your brother get the money you put in these lands known as the Brierfield property?

A. From George L. Douglass, our grandfather.

Q. Was it a gift to yourself and your brother?

A. Yes, sir.

Q. To put you into business together in Alabama?

A. Yes, sir.

Q. At the time your brother put his—sold the Bibb Furnace interest where were you living?

A. At Bibb Furnace.

Q. What county?

A. Bibb county.

Q. How long did you reside at Bibb Furnace? How long were you engaged in making pig-iron together?

A. About three years.

Q. Is W. D. Carter your brother?

A. Yes, sir.

Q. While you were engaged in the business of making pig-iron were you also engaged in other business?

A. We were running a store in general merchandise.

Q. Under what name did you carry on your business as partners?

A. In the name of the Bibb Furnace Company.

Q. How did you hold the property—that is, the lands and merchandise?

A. As equal partners.

Objection made on the ground that the deeds themselves to the land show how that was and are the best evidence.

Q. State how the partners' assets were held by yourself and brother.

A. As partners in the assets.

Objection on the ground that the question calls for conclusions and not for facts.

958 Q. Have you ever had a final settlement of the partnership business?

A. No, sir.

Q. Did you ever have a partial settlement?

A. Yes, sir.

Q. Was that at the time you have been speaking about when he transferred his interest to you?

A. Yes, sir.

Q. At that time you say that your brother owed you between five

and six thousand dollars. On a final settlement state as nearly as you can how much W. D. would be indebted to you.

A. On a final settlement he would be indebted to me between five and six thousand dollars—nearer six than five thousand.

By Mr. THORINGTON:

Q. Have you any of the assets of the firm of W. D. & K. Carter, Jr., in your control or possession or of the Bibb Furnace Company?

A. No, sir.

By Mr. WILEY:

Q. State how the noted, evidencing the indebtedness of the Brierfield Coal & Iron Company to yourself and brother, were made.

A. To W. D. & K. Carter, Jr.

Q. Was the Bibb furnace a corporation or merely a name and style adopted by your brother in carrying on his business?

A. —.

Objection on the ground that the question calls for the conclusions of the witness instead of the facts.

A. The Bibb Furnace Company was not a corporation, but was a name and style adopted by us in carrying on business.

Q. State whether or not the partnership composed of W. D. & K. Carter, Jr., and doing business under that firm name and style, contracted any partnership debts under the name and style of the Bibb Furnace Company.

A. Yes, sir.

Q. Were those partnership debts contracted under the name of the Bibb Furnace Company?

A. Yes, sir.

Q. In the manufacturing business and the store property
959 and goods, wares, and merchandise, and in the store at Bibb furnace and in the assets of every kind belonging to the business known as the Bibb Furnace Company, state whether yourself and your brother were equal partners, sharing and shared alike, in the business.

A. Yes, sir.

Q. In this partnership business carried on by yourself and your brother were you equal partners in the profits and equally liable for the losses of the partnership?

A. Yes, sir.

By Mr. THORINGTON:

Q. State specifically what was the partnership arrangement or agreement between yourself and your brother.

A. Half of the profits were to be mine and half the profits his, and the same way with the debts.

Q. How much money did you each put in?

A. The same amount, thirty-seven thousand dollars.

Q. Each of you?

A. Yes, sir.

Q. Did you ever adopt a firm name?
A. Yes, sir; we adopted the name of Bibb Furnace Company.
Q. Who kept the books of the firm?
A. James W. Bicourt and George B. Hain. Several of the clerks did some of the work.
Q. When did the partnership begin?
A. Early in 1880.
Q. When did it close?
A. It has not yet closed *yet*.
Q. When did the business close?
A. When we sold to the Brierfield Company.
Q. Done any business since?
A. Yes, sir; we have settled the partnership up. I mean we have done no business as a firm.

Examination closed.

In the Circuit Court of the United States for the Middle District of Alabama. In Equity.

W. L. CHAMBERS, Trustee,
vs.
THE BRIERFIELD COAL & IRON CO. and Others.

960 Comes B. H. CRAIG, a witness examined by and on behalf of Lillian A. Carter, complainant, who, being by me first duly sworn, on oath deposes and says as follows, to wit:

I am now, and was on the 16th day of March, 1888, a practicing attorney in the city of Selma, in said State, and was then and am now a member of the firm of Craig & Craig.

That said firm, as attorneys and agents of Lillian A. Carter, came into the possession of a check or draft for about seventeen hundred dollars ($1,700), payable to Lillian A. Carter's order; which check or draft purported to be a part of the distributable share of said Lillian A. Carter in her father's estate, and witness was then informed that said draft and the sum of about eighteen hundred dollars ($1,800) in cash was so described by the said Lillian A. Carter as a part of said distributive interest in said estates, and at her request and as her attorney we prepared and K. Carter, Jr., executed a transfer, a copy of which is hereto attached marked Exhibit A, in consideration of the payment to him, said K. Carter, Jr., said sum of thirty-five hundred dollars ($3,500).

THE STATE OF ALABAMA,
Chilton County.

Know all men by these presents that for and in consideration of the sum of thirty-five hundred dollars to me this day in hand paid by Lillian A. Carter, the receipt whereof is hereby acknowledged, I have this day and do hereby sell, transfer, set over, and assign to

the said Lillian A. Carter all the claims and demands due
961 from the Brierfield Coal and Iron Company to me, and particularly set out in the agreement hereto attached, & all my interest in said agreement, or the property or demands, debts, or claims therein mentioned.

Witness my hand this 16th day of March, 1888.

K. CARTER, JR.

Attest:

GUY FITZGERALD.
W. P. LASSITER.

I assent & concur in my said wife's (Lillian A. Carter's) act in making the above transfer and contract.

M'ch 16th, 1888.

K. CARTER, JR.

Cross-examination of B. H. CRAIG by MR. THORINGTON:

Plaintiff objects to that part of the testimony of the witness, B. H. Craig, in the following words, to wit: "Witness was then informed that the said draft and the sum of eighteen hundred dollars ($1,800) in cash was so described by the said Lillian A. Carter as a part of said distributive interest in said estate," and moves to exclude the same on the ground that it is hearsay and inadmissible.

Cross-examination:

Q. About what time did you receive the draft for seventeen hundred dollars?

A. I have no recollection of the date except as my memory is refreshed by this transfer dated March 16, 1888, and we must have had the draft or check about that time.

Q. Have you any recollection of the time independently of that paper?

A. Only that it was sometime in the spring of 1888.

Q. Who signed the draft?

A. The draft or check was signed by the guardian of Mrs. Carter, payable to her order.

Q. Did you have any knowledge of the source from which that money came to her?

962 A. No; except as I stated. It was drawn by her guardian to her order and signed by him as guardian.

Q. Who did your firm turn this draft over to?

A. K. Carter, Jr.

Q. Do you know what he did with that money?

A. No, sir.

Examination closed.

TUESDAY, *June* 4, 1889.

The eight (8) bonds heretofore proven by John G. Murray on the 26th day of July, 1888, and withdrawn by him, by permission, for safe-keeping are now returned and deposited with the master.

T. J. Peter, being called and further examined, says three of the bonds, numbered 371, 372, & 373, which were proven by and allowed John G. Murray, as above stated, have been purchased by Mrs. Esther A. Peter and now belong to her.

963 EXHIBIT No. 1.

Exhibit No. 1 to Testimony of Jno. G. Murray.

No. 145. H. B. 77.

An act to amend and ratify the charter of the Brierfield Coal and Iron Company of Bibb county, Alabama.

Ratifying charter of Brierfield Coal and Iron Co.

SECTION 1. Be it enacted by the General Assembly of Alabama, That whereas, on the 27th day of April, A. D. eighteen hundred and eighty-two, the incorporators of the Brierfield Coal and Iron Company, located at Brierfield, in Bibb county, Alabama, filed in the probate court of Bibb county, Alabama, their declaration to become a body corporate, and by due proceedings became a body corporate according to the statutes in such case made and provided; and whereas it is deemed proper and expedient to grant to said corporation certain powers it cannot secure under such general incorporation: Therefore

Be it enacted, That said company is hereby declared to be a body corporate, under the laws of this State, by its present name and style.

Additional powers.

SEC. 2. Be it further enacted, That, in addition to the powers, rights, and privileges and franchises now owned or possessed by said company, it is hereby authorized and empowered to locate, construct, and bring into final completion one or more railways, of such gauge and as many tracks as it may deem proper, from its mines,

964 works, ore-beds, coaling and coking grounds and manufactories to each other, and to any point or points on any of the navigable waters of this State, and to such depot or depots as they may choose to establish along the lines of any of the railways now constructed or that may hereafter be constructed in this State, and to connect with such railways and use the same in the conduct of the business of the company and in the transportation of the products of their mines, manufactories, and other works; and, upon filing in the office of the secretary of state an agreement

to abide by the lawful rules, regulations, rates, and tariffs that may be established by the railroad commission of this State, may engage in the carriage of persons and property for the public. Said company may also construct for the use or lease of or may purchase any railway or railways, now or hereafter constructed, connecting in whole or in part any of its property with any of the railways or navigable waters of this State, or that may be made useful in making such connection. Said company may also purchase, construct, charter, or hire tugs, barges, steamboats, and other means of water transportation, and may use them in the conduct of its business and in the transportation of the products of its mines and manufactories on any of the navigable waters of this State, and may also use the same in the transportation of persons and property for the public.

May construct, charter, or hire tugs & steamboats.

965 SEC. 3. Be it further enacted, That said company is further authorized to lease, purchase, erect, and establish all such buildings, fixtures, structures, machinery, depots, docks, and wharves as may be needed, convenient, or useful in carrying on its business.

Purchase, construct, or lease buildings and machinery.

SEC. 4. Be it further enacted, That said company is authorized to survey and locate its lines of railway over the lands of others for the purpose of defining and describing accurately the parts of said lands which the company wish to have condemned for the right of way, and the said company shall have the right to condemn for its use as right of way a strip of land one hundred feet wide over the lands of others; and proceedings to condemn the lands of others for the use of said company shall be governed and regulated by the general laws of this State in reference to railroad companies: Provided, that just compensation shall be made to the owners of such lands before the company takes possession thereof.

Right of way.

SEC. 5. Be it further enacted, That said company are hereby granted the rights, remedies, powers, and privileges and subjected to the obligations contained in sections 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841, and 1842, in chapter one, title one, part two, of the Code of Alabama of 1876, and all amendments thereto now in existence.

Subject to obligations contained in former section.

966 SEC. 6. Be it further enacted, That the capital stock of said company may be increased from time to time as the business and

Capital stock.

necessities of the company may demand, not contrary to the laws of the land.

SEC. 7. Be it further enacted, That said company shall have the power from time to time to issue bonds for the payment of money borrowed or for its indebtedness secured by mortgage or mortgages on its property or any portion or portions thereof.

Right to issue bonds & mortgage.

SEC. 8. Be it further enacted, That said company may sell its property or any part thereof at any time or times.

Approved December 12, 1884.

967 EXHIBIT No. 2.

This indenture, made this first day of September, A. D. 1882, between the Brierfield Coal and Iron Company of Alabama, a corporation created and organized under the laws of the State of Alabama, party of the first part, and Preston B. Plumb, of Emporia, in the State of Kansas, party of the second part, witnesseth:

That the said party of the first part has resolved to execute, issue, and dispose of its bonds to the amount of five hundred thousand dollars, secured by mortgage upon all property now owned by it or to be hereafter acquired, for the purpose of enabling it to pay for the property now held by it and to obtain means with which to transact and carry on its business, all of which bonds bear date the first day of October, A. D. 1882, and become due thirty years from their date, and are of like tenor and in the form following:

The Brierfield Coal and Iron Company of Alabama.

No. —. $1,000.

First-Mortgage and Sinking-Fund Gold Bonds.

Limited to $500,000.

Know all men by these presents that the Brierfield Coal and Iron Company of Alabama, a corporation created and organized under the laws of the State of Alabama, hereby acknowledges itself to owe Preston B. Plumb, trustee, or bearer, the sum of one thousand dollars in gold coin, at par, of the United States of America, to be paid at the office of the company in Brierfield, Bibb county, State of Alabama, or at the office of said company in the city of New York, State of New

968 York, on the first day of October, A. D. one thousand nine hundred & twelve, with interest on said sum from and after the date hereof, at the rate of six per cent. per annum, in gold coin as aforesaid, payable at said offices on the first days of April and October of each year, until the said principal shall be fully paid, on the presentation and surrender of the annexed coupons as they respectively become due. Said coupons shall be payable to the bearer thereof, whether the bond is registered or not.

This bond is one of a series limited to and aggregating the sum of five hundred thousand dollars, and is secured by a deed of trust or first mortgage, bearing date September first, 1882, duly executed and delivered by the said "The Brierfield Coal and Iron Company of Alabama" to the said Preston B. Plumb, trustee, of all the property now owned by the said company or that may hereafter be acquired by it in the State of Alabama, and is embraced by the sinking-fund provisions therein contained and subject to them.

This bond shall pass by delivery unless registered, or, if registered, by transfer on the books of the company, at its office in Brierfield, Bibb county, in the State of Alabama, or at any other place which the company may determine. After a registration of ownership, certified herein by the transfer agent of the company, no transfer, except upon the books of the company, shall be valid unless the last transfer be to bearer, which shall restore transferability by delivery, but this bond shall continue subject to successive registration and transfers to bearer as aforesaid at the option of each holder.

969 This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon and duly signed by the said trustee.

In witness whereof the said company has caused its seal to be hereto affixed and these presents to be signed by its president and attested by its secretary on the first day of October, A. D. 1882.

[SEAL.] THE BRIERFIELD COAL AND IRON COMPANY OF ALABAMA,

By —— ——, *President.*

Attest: —— ——, *Secretary.*

Now, therefore, this indenture witnesseth: That said party — the first part, in consideration of the premises and the sum of one dollar to it in hand duly paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid, issued or to be issued, as herein recited and provided, and every part of the said principal and interest as the same shall become payable according to the tenor of said bonds and of the coupons thereto annexed, hath granted, bargained, sold, conveyed, and transferred, and does by these presents grant, bargain, sell, convey, and transfer, unto the said party of the second part, trustee as aforesaid, his heirs and assigns, all the real and personal property now owned by said company situate in the State of Alabama, and all the real and personal property that may hereafter be acquired and owned by said company, wherever the same may be situate, together with all the franchises, tolls, incomes, rents, issues, and profits of said company, and all the estate, right, title,

970 interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same and any and every part thereof, with the appurtenances thereto belonging; to have and to hold the same unto the said party of the second part, his successors, heirs, execu-

tors, administrators, and assigns, to his and their own use, benefit, and behoof forever—

In trust, nevertheless, and to and for the uses and interests and purposes hereinafter limited, described, and declared; that is to say—

First. Until default shall be made in the payment of the principal or interest of the said bonds or some of them or until default shall be made in respect to something by these presents required to be done, observed, performed, or kept by the party of the first part, the said party of the first part shall be suffered and permitted to possess, manage, operate, and enjoy all the property and the tolls, incomes, rents, profits, and appurtenances thereof hereinbefore conveyed; to mine, dig, excavate, and remove the coal and iron ore underlying its real estate and every part thereof, and sell the same in the same manner and with the same effect as if this deed had not been made, except as hereinafter provided.

Second. It shall be the duty of the party of the first part, in addition to providing for and paying the interest on said bonds, to provide for and pay into the hands of said trustee, as a sinking fund, the sum of eight thousand dollars on the first day of October in each and every year, beginning with the year 1884, until said bonds and the interest thereof shall be fully paid or until said bonds shall all have been purchased or drawn for said sinking fund, as
971 hereinafter provided.

All sums of money paid into the hands of said trustee for such sinking fund and all its accumulations, from whatever source derived, shall be invested in the purchase of the bonds issued pursuant to this deed of trust, at as low a price as the said trustee can obtain them for, by advertising for bids once a year in the market of the city of New York, or by buying them at private sale if he can do so more cheaply, even after he has advertised for bids; but the said trustee shall in no case pay more than ten per cent. premium on the face of said bonds and accrued interest, and if the same cannot be obtained for such price the said trustee is to invest all moneys in his hands above what is required for a reasonable compensation for his services by depositing it in a trust company.

All bonds issued pursuant to this deed which may be purchased by the trustee shall be held as an investment of said sinking fund, and shall be stamped as belonging to said fund, and shall thereafter not be negotiable.

Third. In case default shall be made in the payment of any interest on any of the aforesaid bonds issued pursuant to this deed, or in case the party of the first part shall fail to pay to said trustee each year for the sinking fund the sum hereinbefore provided for, or shall fail to do or keep any requirement to be done or kept by the party of the first part, and in case such default shall continue for the period of six months, it shall be lawful for the said trustee or his successor to enter into or upon all and singular the property and premises hereby conveyed and each and every part thereof
972 and to have, hold, and use the same, operating, by his superintendents, managers, receivers, servants, attorneys, or agents,

the business of said party of the first part, and to continue the conduct thereof; to make from time to time all repairs, additions, improvements, alterations, and outlays as may seem to said trustee judicious or necessary; to collect and receive all tolls, freights, incomes, rents, issues, and profits of the same, and every part thereof; and after deducting the expences of operating and conducting the business of said party of the first part, and the cost of all said repairs, additions, improvements, alterations, and outlays, and all payments which may be made for taxes, assessments, charges, or liens prior to the lien created hereby on said property and premises and any part thereof, and a reasonable compensation for his own services, to apply the moneys arising as aforesaid to the payment of the interest upon said bonds in the order in which such interest shall have become or shall become due, ratably to the persons holding the coupons evidencing the right to such interest, and, after paying all interest which shall have become due, to apply the same to the satisfaction of the principal of said bonds which may at that time be unpaid, ratably and without distinction or preference.

Fourth. In case default shall be made as aforesaid and shall continue as aforesaid, or in case default shall be made in the payment of the principal of any of said bonds or any part thereof, and such default shall continue for the period of six months as aforesaid, it shall likewise be lawful for the said trustee or his successor,
973 after entry as aforesaid, to sell and dispose of all and singular the property and premises hereby conveyed, at public auction, either in the city of Montgomery, Alabama, or at such place within the State of Alabama as he may designate, and at such time as he may appoint, having first given notice of the time and place of such sale by advertisement, to be published not less than three times a week for six weeks in one or more newspapers in the city of Montgomery, Alabama, and the city of New York, respectively, and to adjourn the said sale from time to time in his discretion, and, if so adjourning, to make the same at the time and place to which the same may be so adjourned, and upon such sale to make and deliver to the purchaser or purchasers of the property so sold good and sufficient deed or deeds in law for the same, which sale made as aforesaid shall be a perpetual bar, both in law and equity, against the party of the first part and all other persons whomsoever lawfully claiming or to claim said property and premises or any part thereof by, from, through, or under it; and after deducting from the proceeds of such sale just allowance for all expenses of such sale, including attorneys' and counsel fees and all other expenses, advances, or liabilities which may have been made or incurred by the said trustee in operating or conducting the business of the party of the first part while in possession, and all payments which may have been made by him for taxes or assessments on said premises or any part thereof, as well as reasonable compensation for his own services, to apply the balance of the payment of the principal
974 of such of said bonds as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal

and be unpaid, without discrimination or preference, ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest, and if after satisfaction thereof a surplus of the said proceeds shall remain to pay over the same to the said party of the first part or to whomesoever may be lawfully or equitably entitled to receive the same; and it is hereby declared that the receipt of the trustee shall be a sufficient discharge to the purchaser or purchasers of the premises for their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, administrators, or assigns, shall not, after payment thereof and having such receipt, be liable to see to its being applied upon or for the trusts and purposes of these presents, or in any manner whatsoever be answerable for any loss, misapplication, or non-application of such purchase-money or any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for any such sale.

Fifth. In case default shall be made in the payment of any half-year's interest on any of the aforesaid bonds at the time and in the manner specified in the coupons issued therewith (provided the said coupons have been presented and the payment of the interest therein specified has been demanded), and in case such default shall continue for six months after the said coupons shall have become due and payable, then and thereupon the principal of all of the bonds
975 secured hereby shall, at the election of the trustee, become immediately due and payable, anything contained in said bonds or herein to the contrary notwithstanding; but a majority in interest of the holders of said bonds may, by an instrument in writing signed by such majority before the interest in arrears shall be paid, instruct said trustee to declare the said principal to be due, or to waive the right so to declare, on such terms and conditions as such majority shall deem proper, or may annul or reverse the election of the trustee, provided no action of the trustee or bondholders shall extend to or be taken to affect any subsequent default or to impair the rights resulting therefrom.

Sixth. The party of the first part shall from time to time and at all times hereafter, and as often as thereunto requested by such trustee, execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in the law for the better assuring to said trustee, upon the trusts herein expressed, the said property and premises and every part thereof hereinbefore conveyed or intended so to be conveyed, and all property and franchises now held or hereafter acquired, as by said trustee or by his counsel learned in the law shall be reasonably advised, devised, or required.

Seventh. The trustee shall have full power in his discretion, upon the written request of the party of the first part, to sell, convey, and exchange any of the property hereinbefore conveyed or intended to be conveyed which may be proper or necessary to be sold, conveyed, or exchanged in the operation or conduct of the business of the party of the first part, and which may become unneces-
976 sary in the transaction of the business of said party of the first part, and it shall be the duty of the party of the first part to sell and dispose of any property that may be unnecessary for the

transaction of its business, and which can be sold without loss and at a fair price, and to make, acknowledge, and deliver proper conveyances to carry the same into effect; but any land which may be acquired or exchanged for any of the property herein conveyed or intended to be conveyed shall inure to and be covered by this deed as after- acquired property hereinbefore designated, and all moneys arising from sales of any of the property herein conveyed or intended to be conveyed shall be paid to the trustee and shall constitute a part of the sinking fund hereinbefore mentioned, until such time as the said sinking fund shall, with its accumulations from whatever source, equal the par value of said bonds and ten per cent. added thereto and accrued interest thereon, after which the proceeds of all said sales shall be retained by the party of the first part.

Eighth. If the party of the first part shall well and truly pay the principal of the said bonds and every one of them and all interest thereon when the same shall become due and payable according to the tenor of said bonds and the coupons issued therewith and shall truly observe, perform, and keep all and singular the several things herein required by it to be performed or kept according to the true intent and meaning of this deed, then and in that case all the estate, right, title, and interest of the said trustee, party of the second part, and of his successor in the trust hereby created shall
977 cease, determine, and become void; otherwise the same shall be and remain in full force and virtue.

Ninth. It is hereby declared and agreed that it shall be the duty of the trustee to execute the power of entry or the power of sale hereby granted, or both, or to take appropriate proceedings in equity or at law, or both, to inforce the rights of the bondholders under this deed upon requisition in writing—that is to say, if the default be as to interest, sinking fund, or principal of said bonds, such requisition upon the said trustees shall be by holders of not less than a majority in amount of said bonds, and upon such requisition and a proper indemnification by the persons making the same to said trustee against all costs and expenses to be by him incurred it shall be the duty of said trustee to enforce the rights of all the bondholders under this deed by entry, sale, or legal proceedings, as he shall deem most expedient for the interest of all the holders of said bonds; if the default shall be in the omission to comply with any other provision herein contained to be performed or kept by said party of the first part, then and in such case the requisition shall be as aforesaid, but it shall be within the discretion of said trustee to enforce or waive the rights of the bondholders by reason of such default, subject to the power hereby declared of a majority in interest of the holders of said bonds by requisition in writing, signed by such majority, to instruct said trustee to waive such default, or upon adequate indemnity as aforesaid to enforce their rights by reason thereof, provided that no action of said trustee or
978 bondholders, or both, in waiving such default or otherwise shall extend to or be taken to affect any subsequent default or to impair the rights resulting therefrom.

Tenth. The party of the first part agrees that in case of a sale of said property under judicial proceedings to foreclose the same the same may be sold as an entire piece of property or in separate pieces or parcels, as the said trustee may in his discretion determine.

Eleventh. It is mutually agreed by and between the parties hereto that in case the trustee herein appointed or any successor of said trustee shall die, resign, or be removed, a successor may be appointed by the party of the first part, subject to the approval of a majority of the bondholders, who shall be notified, by a printed notice published ten consecutive days in a newspaper in the city of New York, to meet for the purpose of signifying their choice, and in case they do not disapprove of the appointment of the party of the first part within one month after such notice shall have been first published the trustee so appointed shall be authorized to act under this agreement. If a majority of the bondholders disapprove and so notify the party of the first part, than the party of the first part shall nominate some other person to be trustee, subject to the approval of the majority of the bondholders as aforesaid, and so on until a trustee shall be appointed to the satisfaction of the majority, provided, nevertheless, and it is so hereby declared and agreed, that in case it shall at any time hereafter prove impracticable after rea-
979 sonable exertions to appoint a successor in the manner hereinbefore provided application in behalf of all the holders of the bonds secured hereby may be made by holders of a majority in amount of said bonds to any circuit court of the United States or to any other court of competent jurisdiction for any judicial district in which said property or any part thereof may be situate for the appointment of a new trus-ee.

In witness whereof the said party of the first part hath hereunto caused its corporate seal to be affixed and these presents to be signed by its president and attested by its secretary, and the said party of the second part, trustee as aforesaid, has also hereunto set his hand and seal the day and year first above written.

[Seal B. C. & I. Co.]

THE BRIERFIELD COAL AND IRON COMPANY OF ALABAMA,
By T. J. PETER, *President.*

Attest: JOHN G. MURRAY, *Secretary.*
P. B. PLUMB, *Trustee.* [SEAL.]

THE STATE OF ALABAMA, }
Bibb County. }

I, Jesse W. Mahan, a justice of the peace in and for said county, hereby certify that T. J. Peter, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the above conveyance, he executed the same voluntarily and by authority of the said Brierfield Coal and Iron Company on the day the same bears date.

Given under my hand this twenty-seventh day of September, A. D. 1882.

JESSE W. MAHAN,
Just. of Peace.

980 THE STATE OF KANSAS, }
County of Lyon. }

I, J. G. Traylor, clerk of the district court of the county of Lyon and State of Kansas, hereby certify that P. B. Plumb, whose name is signed to the foregoing conveyance as trustee and who is known to me, acknowledges before me on this day that, being informed of the contents of the above conveyance, he executed the same and accepted said trust voluntarily on the day the same bears date.

Given under my hand and the seal of said district court
[SEAL.] for the county of Lyon on this twenty-eight day of October, A. D. 1882.

J. G. TRAYLOR,
Clerk Dist. Court.

I hereby certify that this conveyance was filed in the probate office, Shelby county, Alabama, f-r record July 20th, 1887, and recorded in Mortgage Book No. 19, on page 19.

JAMES T. LEEPER,
Judge of Probate.

STATE OF ALA., }
Chilton Co. }

I hereby certify that the within conveyance was filed in my office for record on the 23rd day of July, 1887, and recorded in Book 18, page 99.

Given under — hand this 23rd day of July, 1887.

H. J. CALLEN,
Judge of Probate.

THE STATE OF ALABAMA, }
Bibb County. }

I hereby certify that the within conveyance was filed in my office for record on the 6th day of Nov., 1882, at — o'clock —. m., and duly recorded in vol. S of Deeds, pages 326 to 331, on the 8th day of Nov., 1882.

JNO. S. GARDNER,
Judge of Probate.

EXHIBIT NO. 3.

THE STATE OF ALABAMA, }
Bibb County. }

Whereas, on the first day of September, A. D. 1882, the Brierfield Coal & Iron Company of Alabama, party of the first part, made a deed of conveyance to Preston B. Plumb, of Emporia, in the
981 State of Kansas, party of the second part, which deed, with the lawful acknowledgments of its execution thereon endorsed

and the certificates of its registration thereon, is in the words and figures following, to wit:

This indenture, made this first day of September, A. D. 1882, between the Brierfield Coal and Iron Company of Alabama, a corporation created and organized under the laws of the State of Alabama, party of the first part, and Preston B. Plumb, of Emporia, in the State of Kansas, party of the second part, witnesseth:

That the said party of the first part has resolved to execute, issue, and dispose of its bonds to the amount of five hundred thousand dollars, secured by mortgage upon all property now owned by it or to be hereafter acquired, for the purpose of enabling it to pay for the property now held by it, and to obtain means with which to transact and carry on its business; all of which bonds bear date the first day of October, A. D. 1882, and become due thirty years from their date, and are of like tenor and in the form following:

The Brierfield Coal and Iron Company of Alabama.

No. —. $1,000.

First-Mortgage and Sinking-Fund Gold Bonds.

Limited to $500,000.

Know all men by these presents that the Brierfield Coal and Iron Company of Alabama, a corporation created and organized under the laws of the State of Alabama, hereby acknowledges itself to owe Preston B. Plumb, trustee, or bearer, the sum of one thousand dollars in gold coin, at par, of the United States of America, to be paid at the office of the company in Brierfield, Bibb county, State of Ala-
982 bama, or at the office of said company in the city of New York, State of New York, on the first day of October, A. D. one thousand nine hundred and twelve, with interest on said sum from and after the date hereof, at the rate of six per cent. per annum, in gold coin as aforesaid, payable at said offices, on the first days of April and October of each year, until the said principal shall be fully paid, on the presentation and surrender of the annexed coupons as they respectively become due; said coupons shall be payable to the bearer thereof whether the bond is registered or not.

This bond is one of a series limited to and aggregating the sum of five hundred thousand dollars and is secured by a deed of trust or first mortgage, bearing date September 1st, 1882, duly executed and delivered by the said "The Brierfield Coal and Iron Company of Alabama" to the said Preston B. Plumb, trustee, of all the property now owned by said company or that may hereafter be acquired by it in the State of Alabama, and is embraced by the sinking-fund provisions therein contained and subject to them.

This bond shall pass by delivery unless registered, or, if registered, by transfer on the books of the company at its office in Brierfield, Bibb county, in the State of Alabama, or at any other place which the company may determine. After a registration of ownership, certified hereon by the transfer agent of the company, no transfer, ex-

cept upon the books of the company, shall be valid unless the last transfer be to bearer, which shall restore transferability by
983 delivery; but this bond shall continue subject to successive registrations and transfers to bearer as aforesaid at the option at each holder.

This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon and duly signed by the said trustee.

In witness whereof the said company has caused its seal to be hereto affixed and these presents to be signed by its president and attested by its secretary on the first day of October, A. D. 1882.

BRIERFIELD COAL & IRON
COMPANY OF ALABAMA, [SEAL.]
By —— ——, *President.*

Attest: —— ——, *Secretary.*

Now, therefore, this indenture witnesseth: That said party of the first part, in consideration of the premises and the sum of one dollar to it in hand duly paid at or before the ensealing and delivery of the- presents, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds aforesaid, issued or to be issued, as herein recited and provided, and every part of the said principal and interest as the same shall become payable according to the tenor of said bonds and of the coupons thereto annexed, hath granted, bargained, sold, conveyed, and transferred, and does by these presents grant, bargain, sell, convey, and transfer, unto the said party of the second part, trustee as aforesaid, his heirs and assigns, all the real and personal property now owned by said company situate in the State
984 of Alabama, and all the real and personal property that may hereafter be acquired and owned by said company, wherever the same may be situate, together with all the franchises, tolls, incomes, rents, issues, and profits of said company, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same and any and every part thereof, with the appurtenances thereto belonging; to have and to hold the same unto the said party of the second part, his successors, heirs, executors, administrators, and assigns, to his and their own use, benefit, and behoof forever—

In trust, nevertheless, and to and for the uses and interests and purposes hereinafter limited, described, and declared—that *it* to say:

First. Until default shall be made in the payment of the principal or interest of the said bonds or some of them, or until default shall be made in respect to something by these presents required to be done, observed, performed, or kept by the party of the first part, the said party of the first part shall be suffered and permitted to possess, manage, operate, and enjoy all the property and the tolls, incomes, rents, profits, and appurtenances thereof, hereinbefore conveyed; to mine, dig, excavate, and remove the coal and iron ore underlying its real estate and every part thereof, and sell the same in the same

manner and with the same effect as if this deed had not been made, except as hereinafter provided.

Second. It shall be the duty of the party of the first part,
985 in addition to providing for and paying the interest on said bonds, to provide for and pay into the hands of said trustee, as a sinking fund, the sum of eight thousand dollars on the first day of October in each and every year, beginning with the year 1884, until said bonds and the interest thereof shall be fully paid, or until said bonds shall all have been purchased or drawn for such sinking fund, as hereinafter provided.

All sums of money paid into the hands of said trustee for such sinking fund and all its accumulations, from whatever source derived, shall be invested in the purchase of the bonds issued pursuant to this deed of trust at as low a price as the said trustee can obtain them for by advertising for bids once a year in the market of the city of New York, or by buying them at private sale, if he can do so more cheaply, even after he has advertised for bids; but the said trustee shall in no case pay more than ten per cent. premium on the face of said bonds and accrued interest, and if the same cannot be obtained for such price the said trustee is to invest all moneys in his hands above what is required for a reasonable compensation for his services by depositing it in a trust company.

All bonds issued pursuant to this deed which may be purchased by the trustee shall be held as an investment of said sinking fund, and shall be stamped as belonging to said fund, and shall thereafter not be negotiable.

Third. In case default shall be made in the payment of any interest on any of the aforesaid bonds issued pursuant to this
986 deed, or in case the party of the first part shall fail to pay to said trustee each year, for the sinking fund, the sum hereinbefore provided for, or shall fail to do or keep any requirement to be done or kept by the party of the first part, and in case such default shall continue for the period of six months, it shall be lawful for the said trustee or his successor to enter into or upon all and singular the property and premises hereby conveyed and each and every part thereof, and to have, hold, and use the same, operating by his superintendents, managers, receivers, servants, attorneys or agents the business of said party of the first part, and to *to* continue the conduct thereof; to make from time to *to* time all repairs, additions, improvements, alterations, and outlays as may seem to said trustee judicious or necessary; to collect and receive all tolls, freights, incomes, rents, issues, and profits of the same and every part thereof; and, after deducting the expenses of operating and conducting the business of said party of the first part and the cost of all said repairs, additions, improvements, alterations, and outlays, and all payments which may be made for taxes, assessments, charges, or liens prior to the lien created hereby on said property and premises and any part thereof, and a reasonable compensation for his own services, to apply the moneys arising as aforesaid to the payment of the interest upon said bonds in the order in which such interest shall have become or shall become due, ratably, to the persons

holding the coupons evidencing the right to such interest;
987 and, after paying all interest which shall have become due, to apply the same to the satisfaction of the principal of said bonds which may at that time be unpaid, ratably and without distinction or preference.

Fourth. In case default shall be made as aforesaid and shall continue as aforesaid, or in case default shall be made in the payment of the principal of any of said bonds or any part thereof, and such default shall continue for the period of six months as aforesaid, it shall likewise be lawful for the said trustee or his successor, after entry as aforesaid, to sell and dispose of all and singular the property and premises hereby conveyed at public auction, either in the city of Montgomery, Ala., or at such place within the State of Alabama as he may designate and at such time as he may appoint, having first given notice of the time and place of such sale by advertisement to be published not less than three times a week for six weeks in one or more newspapers in the city of Montgomery, Alabama, and the city of New York, respectively, and to adjourn the said sale from time to time, in his discretion, and if so adjourning to make the same at the time and place to which the same may be so adjourned, and upon such sale to make and deliver to the purchaser or purchasers of the property so sold good and sufficient deed or deeds in law for the same; which sale made as aforesaid shall be a perpetual bar, both in law and equity, against the party of the first part and all other persons whomsoever lawfully
988 claiming or to claim said property and premises or any part thereof by, from, through, or under it; and after deducting from the proceeds of such sale just allowance for all expenses of such sale, including attorneys' and counsel fees and all other expenses, advances, or liabilities which may have been made or incurred by the said trustee in operating or conducting the business of the party of the first part while in possession, and all payments which may have been made by him for taxes or assessments on said premises or any part thereof, as well as reasonable compensation for his own services, to apply the balance of the payment of the principal of such of said bonds as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, ratably to the aggregate amount of such unpaid principal and accrued and unpaid interest; and if after satisfaction thereof a surplus of the said proceeds shall remain, to pay over the same to the said party of the first part or to whomsoever may be lawfully or equitable entitled to receive the same; and it is hereby declared that the receipt of the trustee shall be a sufficient discharge to the purchaser or purchasers of the premises for their purchase-money, and that such purchaser or purchasers, his or their heirs, executors, administrators, or assigns, shall not after payment thereof and having such receipt be liable to see to its being applied upon or for the trusts and
989 purposes of these presents, or in any manner whatsoever be answerable for any loss, misapplication, or non-application

of such purchase-money or any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for any such sale.

Fifth. In case default shall be made in the payment of any half year's interest on any of the aforesaid bonds at the time and in the manner specified in the coupons issued therewith (provided the said coupons have been presented and the payment of the interest therein specified has been demanded), and in case such default shall continue for six months after the said coupons shall have become due and payable, then and thereupon the principal of all of the bonds secured hereby shall, at the election of the trustee, become immediately due and payable, anything contained in said bonds or herein to the contrary notwithstanding; but a majority in interest of the holders of said bonds may, by an instrument in writing, signed by such majority before the interest in arrears shall be paid, instruct said trustee to declare the said principal to be due or to waive the right so to declare on such terms and conditions as such majority shall deem proper, or may annul or reverse the election of the trustee, provided no action of the trustee or bondholders shall extend to or be taken to affect any subsequent default or to impair the rights resulting therefrom.

Sixth. The party of the first part shall, from time to time and at all times hereafter and as often as thereunto requested by such trustee, execute, acknowledge, and deliver all such further
990 deeds, conveyances, and assurances in law for the better assuring to said trustee upon the trusts herein expressed the said property and premises and every part thereof hereinbefore conveyed or intended so to be conveyed, and all property and franchises now held or hereafter acquired, as by said trustee or by his counsel learned in the law shall be reasonably advised, devised, or required.

Seventh. The trustee shall have full power, in his discretion, upon the written request of the party of the first part, to sell, convey, and exchange any of the property hereinbefore conveyed or intended to be conveyed which may be proper or necessary to be sold, conveyed, or exchanged in the operation or conduct of the business of the party of the first part and which may become unnecessary in the transaction of the business of said party of the first part, and it shall be the duty of the party of the first part to sell and dispose of any property that may be unnecessary for the transaction of its business and which can be sold without loss and at a fair price, and to make, acknowledge, and deliver proper conveyances to carry the same into effect; but any land which may be acquired or exchanged for any of the property herein conveyed or intended to be conveyed shall inure to and be covered by this deed as after-acquired property hereinbefore designated, and all moneys arising from sales of any of the property herein conveyed or intended to be conveyed shall be paid to the trustee and shall constitute a part of the sinking fund hereinbefore mentioned until such time as the said
991 sinking fund shall, with its accumulations from whatever source, equal the par value of said bonds and ten per cent. added thereto, and accrued interest thereon, after which the pro-

ceeds of all said sales shall be retained by the party of the first part.

Eighth. If the party of the first part shall well and truly pay the principal of the said bonds and every one of them, and all interest thereon, when the same shall become due and payable according to the tenor of said bonds and coupons issued therewith, and shall truly observe, perform, and keep all and singular the several things herein required by it to be performed or kept according to the true intent and meaning of this deed, then and in that case all the estate, right, title, and interest of the said trustee, party of the second part, and of his successor in the trust hereby created shall cease, determine, and become void; otherwise the same shall be and remain in full force and virtue.

Ninth. It is hereby declared and agreed that it shall be the duty of the trustee to execute the power of entry or the power of sale hereby granted, or both, or to take appropriate proceedings in equity or at law, or both, to enforce the rights of the bondholders under this deed, upon requisition in writing—that is to say, if the default be as to interest, sinking fund, or principal of said bonds, such requisition upon the said trustees shall be by holders of not less than a majority in amount of said bonds, and upon such requisition and a proper indemnification by the persons making the same to said trustee against all costs and expenses to be by him incurred
992 it shall be the duty of said trustee to enforce the rights of all the bondholders under this deed by entry, sale, or legal proceedings as he shall deem most expedient for the interest of all the holders of said bonds; if the default shall be in the omission to comply with any other provision herein contained to be performed or kept by said party of the first part, then and in such case the requisition shall be as aforesaid; but it shall be within the discretion of said trustee to enforce or waive the right of the bondholders by reason of such default, subject to the power hereby declared of a majority in interest of the holders of said bonds by requisition in writing, signed by such majority, to instruct said trustee to waive such default, or upon adequate indemnity as aforesaid to enforce their rights by reason thereof, provided that no action of said trustee or bondholders, or both, in waiving such default or otherwise shall extend to or be taken to effect any subsequent default or to impair the rights resulting therefrom.

Tenth. The party of the first part agrees that, in case of a sale of said property under judicial proceedings to foreclose the same, the same may be sold as an entire piece of property or in separate pieces or parcels, as the said trustee may in his discretion determine.

Eleventh. It is mutually agreed by and between the parties hereto that in case the trustee herein appointed or any successor of said trustee shall die, resign, or be removed a successor may be appointed by the party of the first part, subject to the approval of a majority of the bondholders, who shall be notified by a printed notice
993 published ten consecutive days in a newspaper in the city of New York to meet for the purpose of signifying their choice, and in case they do not disapprove of the appointment of

the party of the first part within one month after such notice shall have been first published the trustee so appointed shall be authorized to act under this agreement. If a majority of the bondholders disapprove and so notify the party of the first part, then the party of the first part shall nominate some other person to be trustee, subject to the approval of the majority of the bondholders as aforesaid, and so on until a trustee shall be appointed to the satisfaction of the majority; provided, nevertheless, and it is so hereby declared and agreed, that in case it shall at any time hereafter prove impract-able after reasonable exertions to appoint a successor in the manner hereinbefore provided application in behalf of all the holders of the bonds secured hereby may be made by holders of a majority in amount of said bonds to any circuit court of the United States, or to any other court of competent jurisdiction for any judicial district in which said property or any part thereof may be situate, for the appointment of a new trustee.

In witness whereof the said party of the first part hath hereunto caused its corporate seal to be affixed and these presents to be signed by its president and attested by its secretary; and the said party of the second part, trustee as aforesaid, has also hereunto set his hand and seal the day and year first above written.

THE BRIERFIELD COAL AND IRON COMPANY OF ALABAMA,

[SEAL.] (Signed) By T. J. PETER, *President.*

Attest: (Signed) JOHN G. MURRAY, *Secretary.*

(Signed) P. B. PLUMB, *Trustee.*

994 STATE OF ALABAMA, }
Bibb County. }

I, Jesse W. Mahan, a justice of the peace in and for said county, hereby certify that T. J. Peter, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the above conveyance, he executed the same voluntarily and by authority of the said Brierfield Coal & Iron Company on the day the same bears date.

Given under my hand this twenty-seventh day of September, A. D. 1882.

(Signed) JESSE W. MAHAN, *J. of P.*

STATE OF KANSAS, }
County of Lyon. }

I, J. G. Traylor, clerk of the district court of the county of Lyon and State of Kansas, hereby certify that P. B. Plumb, whose name is signed to the foregoing conveyance as trustee and who is known to me, acknowledged before me on this day that, being informed of the contents of the above conveyance, he executed the same and accepted said trust voluntarily on the day the same bears date.

Given under my hand and the seal of the said district court for

the county of Lyon on this twenty-eighth day of October, A. D. 1882.

(Signed) J. G. TRAYLOR,
Clk Dist. Court.

STATE OF ALABAMA, }
Bibb County. }

I hereby certify that the within conveyance was filed in my office for record on the sixth day of November, 1882, at — o'clock a. m., and duly recorded in volume S of Deeds, pages 326 to 336, on the 8th of November, 1882.

(Signed) JOHN S. GARDNER,
Judge of Probate.

995 I hereby certify that this conveyance was filed in the probate office, Shelby county, Alabama, for record July 20th, 1887, and recorded in Mortgage Book Number nineteen, on page 19.

JAMES T. LEEPER,
Judge of Probate.

STATE OF ALABAMA, }
Chilton County. }

I hereby certify that the within conveyance was filed in my office for record on the 23rd day of July, 1887, and recorded in Book 18, page 99.

Given under my hand this 23rd day of July, 1887.

H. J. CALLEN,
Judge of Probate.

And whereas in the sixth section of said deed of conveyance it is agreed and provided as follows, namely: "The party of the first part shall from time to time and at all times hereafter, and as often as thereunto requested by such trustee, execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in law for the better assuring to said trustee, upon the trusts herein expressed, the said property and premises and every part thereof hereinbefore conveyed or intended so to be conveyed, and all property and franchises now held or hereafter acquired, as by said trustee or by his counsel learned in the law shall be reasonably advised, devised, or required;"

And whereas the said Preston B. Plumb, on the 25th day of July, 1887, made the following request in writing for a further conveyance and assurance respecting said property, to wit:

996 "To the Brierfield Coal and Iron Company of Brierfield, Alabama:

Pursuant to the promises and obligations of a certain indenture of mortgage made and executed by you to the undersigned as trustee, bearing date September first, 1882, for the purpose of securing upon the property therein mentioned and described certain bonds, amounting to the total sum of five hundred thousand dollars, I

hereby request you to execute, acknowledge, and deliver to me, as trustee as aforesaid, a further mortgage or other proper conveyance, whereby you shall convey to me, as trustee as aforesaid and for the uses and purposes of the trust in said first-mentioned instrument set out, all property, both real and personal, by you acquired since the date of said first-mentioned mortgage, and that you will also in said mortgage or other conveyance accurately and fully set out and describe by numbers, meet-s and bounds, location, or otherwise all the lands which at the said last-mentioned date were owned by you and which were covered by or designed to be covered by said first-mentioned mortgage, and which property was made the basis of said mortgage and was actually pledged for the security of the bonds therein mentioned, and also all personal property now owned by you which was so owned at the date of said mortgage, and also all franchises held at said date or hereafter acquired, and also to execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in law for the better assuring to me as such trustee, upon the trusts expressed in said mortgage, the property and premises therein conveyed or intended to be so conveyed, and
997 all property and franchises then held or thereafter acquired, and generally to do and perform such acts and things as shall make subject to the assurance and payment of said bonds of five hundred thousand dollars all the property, both real and personal, now owned by you.

Witness my hand this 25th day of July, 1887.

PRESTON B. PLUMB, *Trustee.*"

And whereas the said Brierfield Coal and Iron Company of Brierfield, Alabama, since the ensealing and delivery of said deed as above set forth, has, in accordance with the provisions thereof, acquired certain personal and real estates and properties and easements, privileges, and appurtenances, which are subject to all the trusts and agreements and covenants in said deed expressed, and are included in said conveyance, but are not therein specifically described: Now, the said Brierfield Coal and Iron Company, for the purpose of complying with and executing the agreement and covenant in the sixth section of said deed contained, in accordance with the demand of Preston B. Plumb, trustee, and in consideration of the premises, doth by these presents further assure and convey and further and more specifically describe the real estate in said deed included and conveyed to Preston B. Plumb, the party of the second part, as the same is more fully designated and described as follows, to wit: The following-described real estate in Bibb county, State of Alabama, and situate in township twenty-two (22) south, range five (5) west: The southwest quarter ($\frac{1}{4}$) of the southwest
998 quarter of section twelve (12), and the northeast quarter ($\frac{1}{4}$) of the northeast quarter ($\frac{1}{4}$) and the southwest quarter ($\frac{1}{4}$) of the northeast quarter ($\frac{1}{4}$) of section fourteen (14); and the following real estate in township twenty-four (24) north, range eleven (11) east, namely: The southeast quarter ($\frac{1}{4}$) and the east half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) and the southwest quarter ($\frac{1}{4}$) of the southwest quar-

ter (¼) of section four (4), and the south half (½) of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the southwest quarter (¼) of section five (5), and the west half (½) of the northeast quarter (¼) and the north half (½) of the southeast quarter (¼) of section six (6), and the east half (½) of the northeast quarter (¼) of section eight (8), and the west half (½) of the northwest quarter (¼) of section nine (9), and the following lands: The southeast quarter (¼) and the southeast quarter (¼) of the southwest quarter of section twenty-four (24), and the northeast quarter (¼) and the south half (½) of section twenty-five (25), and the whole of section twenty-six (26), and the whole of section twenty-seven (27), and the southeast quarter (¼) and the northeast quarter (¼) of the southwest quarter (¼) and the southeast quarter of the northwest quarter (¼) and the south half of the northeast quarter (¼) of section twenty-eight (28), and all of the land lying south of the tram-road in the southeast quarter (¼) of section twenty-three (23), and the whole of section thirty-three (33), and the whole of section thirty-four (34) except the northeast quarter (¼) of the southeast quarter (¼), and the northwest quarter (¼) of section thirty-five (35) except the southwest quarter (¼) thereof and
999 the west half (½) of the northeast quarter (¼), and the land lying north of the grade of the Ashby and Bibb Furnace railroad in the northeast quarter of section thirty-five (35), and also the southwest quarter (¼) of the southwest quarter (¼) of section thirty-five (35), and all of the west half (½) of the northwest quarter (¼) of section thirty-six (36) that lies north of the grade of the Ashby and Bibb Furnace railroad, and the west half (½) of the southeast quarter of section thirty-six (36); also all the iron ore and the mining rights to the following lands: All of section twenty-two (22), and all lands owned by estate of J. N. Smith in section twenty-one (21), and the north half (½) of section twenty-eight (28), and the west half of the southwest quarter (¼) of section twenty-eight (28), and the south half (½) of southwest quarter (¼) of section twenty-three (23); and the following lands in township twenty-three (23) north, range eleven (11) east, namely: All of section one (1) except the south half (½) of the southwest quarter (¼), and all of section two (2) except the southwest quarter (¼) of the northwest quarter (¼) and the northwest quarter (¼) of the southwest quarter (¼) and except the northeast quarter (¼) of the northeast quarter (¼) of said section two (2), and all of section three (3) except the southeast quarter (¼) of the northeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) of said section three (3), and the northeast quarter (¼) and the east half (½) of the southwest quarter (¼) and the northwest quarter (¼) of the southwest quarter (¼) and the west half (½) of the southeast quarter (¼) of section four (4), and the south half (½) of the north half (½) and the northeast quarter (¼) of the northeast quarter (¼) and the northeast quarter (¼) of the southwest quarter (¼) of section five (5), and the north-
1000 east quarter (¼) and the east half (½) of the southeast quarter (¼) of section ten (10), and the whole of section eleven (11) except the southeast quarter (¼) of the southwest quarter (¼)

and the south half (½) of the southeast quarter (¼) of said section eleven (11), and the northwest quarter (¼) of the southwest quarter (¼) of section twelve (12); also the northwest quarter (¼) of the northwest quarter (¼) of section five (5), township twenty-three (23) north, range twelve (12) east; also the following lands in township twenty-four (24) north, range twelve (12) east, namely: The southwest quarter (¼) of the southwest quarter (¼) and the northwest quarter (¼) of the southwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) of section nineteen (19), and all that portion of the west half (½) of the southeast quarter (¼) of section nineteen (19) lying north and west of the East Tennessee, Virginia & Georgia railroad; also the following tract: Commencing at the middle of section nineteen (19) on the south boundary line of said section, *three* east on said section line to Mahan's Ford road; thence north to the centre of Mahan's creek; thence down said creek to the middle line of section nineteen (19), running north and south; thence south to the point of beginning; also the following tract of land: The southeast quarter (¼) of the northeast quarter (¼) and that portion of the southwest quarter (¼) of the northeast quarter (¼) that lies east of the East Tennessee, Virginia & Georgia railroad, in section nineteen (19), and the north half (½) of the northeast quarter (¼), and twenty-five (25) acres lying west of the East Tennessee, Virginia & Georgia railroad, in the southwest quarter (¼) of
1001 the northeast quarter (¼) and the east half (½) of the northwest quarter (¼), except two and twenty-three hundredths ($2\frac{23}{100}$) acres on the east side of Mahan's creek and south of the line commencing in the south line of the northwest quarter (¼) at a point four & fifty one-hundredths chains west of the southeast corner of said quarter section, and thence running north seventy-one (71) degrees west magnetic bearing to Mahan's creek; also the following tract in the northeast quarter (¼) of the southwest quarter (¼): Commencing at the northeast corner of said southwest quarter (¼), thence eighty (80) rods south to the southeast corner of the northeast quarter (¼) of the southwest quarter (¼), thence west ten and fifty-hundredths chains, thence north eleven and one-half degrees east magnetic bearing to the north line of the quarter section, thence east on said line four and fifty-hundredths chains to first point, containing fifteen (15) acres; also two and one-half (2½) acres in the southwest corner of the northeast quarter (¼) of the southwest quarter (¼) which lies south of the old tram-road; also the following tract: Commencing at the southwest corner of the northeast quarter (¼) of the southwest quarter (¼), thence running east along the south side of said forty-acre tract six hundred & twenty-four (624) feet, thence north fourteen degrees & twenty minutes (14° 20′) east magnetic bearing one hundred & thirty-four (134) feet, thence north twelve degrees east (12°) magnetic bearing four hundred & twenty-six (426) feet, thence south fifty-one degrees and thirty minutes (51° 31′) west one hundred and eighty-eight (188) feet, thence south seventy-eight degrees and fifteen minutes (78° 15′) west one hundred & thirty-four (134) feet,
1002 thence parallel to south line of forty-acre tract three

hundred ninety and four-tenths (390 4/10) feet to a point one hundred and twenty (120) feet east of the west line of said forty-acre tract, thence north eight hundred and fifty-four and four-tenths (854 4/10) feet parallel to the west line of said forty-acre tract to the north line of said northeast quarter (¼) of the southwest quarter (¼), thence west along said line one hundred & twenty (120) feet, thence south thirteen hundred and twenty (1320) feet to the first point; also the following tract: Commencing at the southwest corner of the southwest quarter (¼) of northwest quarter (¼), thence easterly ninety-one and six-tenths feet (91.6) along south line of said quarter section; thence northerly parallel to west line of said quarter section about five hundred (500) feet to the center of Mahan's creek; thence down said creek to west line of section nineteen (19); thence southerly about (480) four hundred & eighty feet along said section line to point of beginning, all of the above tracts being in section nineteen (19); and the south half (½) of the northeast quarter (¼) and the west half (½) of the southeast quarter (¼) of section twenty-nine (29), and the north half (½) of the northwest quarter (¼) and the east half (½) of the southeast quarter (¼) of the northwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) and the southwest quarter (¼) of the southeast quarter (¼) and the west half of the northwest quarter (¼) of the northeast quarter (¼); and the following-described tract: Commencing at the southeast corner of the northwest quarter (¼) of the northeast quarter (¼), thence north four
1003 and one-half degrees (4½°) west eleven and fifty-hundredths (11.50) chains; thence south eighty-five and one-half degrees (85½°) west ten (10) chains; thence south four and one-half degrees (4½°) east eleven and fifty-hundredths (11.50) chains; thence north eighty-five and one-half degrees (85½°) east ten (10) chains to first point; also a triangular piece commencing at the northwest corner of the above lot, thence north seven (7°) degrees east three and twenty-five hundredths chains; thence north seventy-seven degrees (77°) west sixty-five (65) links to a point on north & south line, all of the above tracts being in section thirty (30); also the south half of the northeast quarter (¼) and the northeast ¼ of the southeast quarter (¼) of section thirty-one (31); also the south half of the northwest quarter (¼) and the northwest quarter of the northeast quarter (¼) and the south half (½) of the southwest (¼) and the west half (½) of the southeast quarter (¼) of section thirty-two (32).

And the following-described real estate situate in Shelby county, State of Alabama: The southwest quarter of the southeast quarter (¼) of section nineteen (19), township twenty-one (21) south, range two (2) west, and the southwest quarter (¼) of the northeast quarter of section thirty-five (35), township nineteen (19) south, range three (3) west, and the southwest quarter (¼) of the northwest quarter (¼) of section two (2), township twenty (20) south, range three (3) west, and the south half of the southeast quarter (¼), section six (6), township twenty-one (21) south, range three west; and the following
1004 lands in township twenty-one (21) south, range three (3) west, namely: The northwest quarter (¼) and the southeast quarter (¼) of the northeast quarter (¼) and the northwest quarter (¼) of the

southeast quarter (¼) and the southwest quarter of the southwest quarter (¼) of section seven (7), and the west half (½) of the northwest quarter of section eight (8), and the southeast quarter (¼) of the northwest quarter of section seventeen (17); and the undivided half interest in the following lands, namely: The southwest quarter (¼) of the northwest quarter (¼) and the north half (½) of the southwest quarter (¼) of section seventeen, and undivided half (½) and the north half (½) of the southeast quarter (¼), and the southeast quarter (¼) of the northeast quarter (¼) and the northeast quarter (¼) of the southwest quarter (¼) of section eighteen (18), and the entire interest in the north half (½) of the northwest quarter (¼) and the west half (½) of the southwest quarter (¼) and the northeast quarter (¼) of the northeast quarter (¼) and the southwest quarter (¼) of the southeast quarter (¼) section eighteen (18), and the southeast quarter (¼), of the northeast quarter (¼) and the southeast quarter (¼) and the east half (½) of the southwest quarter (¼) of section nineteen (19), and the west half (½) and the west half of the southeast quarter (¼) and the northeast quarter of the southeast quarter (¼) and the west half (¼) of the northeast quarter and the southeast quarter of the northeast quarter of section twenty (20), and the southwest quarter of the northeast quarter (¼) and the northwest quarter of the southeast quarter (¼) of section twenty-three (23), and north half (½)
1005 of the northwest quarter (¼) and the southwest quarter (¼) of the southwest quarter (¼) of section twenty-nine (29), and the north half (½) of the northeast quarter (¼) and the east half (½) of the southeast quarter (¼) and the southwest quarter (¼) of section thirty (30), and the northwest quarter and the northwest quarter (¼) of the southwest quarter (¼) and the east half of the northeast quarter (¼) of section thirty-one (31), and the northeast quarter (¼) of the northwest quarter (¼) of section thirty-two (32), and the following lands in township twenty-two (22) south, range three (3) west, namely: The west half (½) of the northwest quarter (¼), section five (5), the west half (½) of the southeast quarter (¼) and the west half (½) of the east half of the southeast quarter and the southwest quarter (¼) of the northeast quarter and the northwest quarter of section six (6), and the northwest quarter and the northwest quarter (¼) of the northeast quarter section (7); and the following lands in township twenty-one (21) south, range four (4) west, namely: The east half (½) of the northwest quarter (¼) and the east half (½) of the southwest quarter (¼) and the southwest quarter (¼) of the southwest quarter (¼) and the southeast quarter of section three (3), and the northeast quarter (¼) of the northwest quarter (¼) and the southwest quarter (¼) of the southwest quarter of section six (6) and the north half of the northwest quarter (¼) and the southwest quarter (¼) of the northwest quarter (¼) and the southeast quarter of the northeast quarter (¼) of section seven (7), and
1006 the northwest quarter (¼) of the northwest quarter (¼) and the southeast quarter (¼) of the northwest quarter (¼) and the northeast quarter (¼) of the southwest quarter (¼) and the undivided one-third (⅓) interest in the south half (½) of the southwest quarter (¼) of section ten (10), and the south half (½) of the northeast quarter

of section twelve (12), and the whole of section thirteen (13), and the undivided one-third (⅓) interest in the north half (½) of the northwest quarter (¼) and the southwest quarter of the northwest quarter (¼) and the west half of the southwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) and the south half of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the east half (½) of the northeast quarter (¼) of section fifteen (15), and the whole of section sixteen (16), and the west half (½) of the southwest quarter (¼) and the west half of the southeast quarter (¼) and the southeast quarter (¼) of the southeast quarter (¼) of section (17) seventeen, and the north half of the northwest quarter (¼) and the southwest quarter (¼) and the northwest quarter (¼) of the southeast quarter (¼) and the west half of the northeast quarter (¼) of section nineteen (19), and the undivided one-third (⅓) interest in the northwest quarter (¼) and the whole of the northeast quarter (¼) of section twenty-two (22), and the southeast quarter (¼) of the northwest quarter (¼) and the northwest quarter of the southeast quarter (¼) of section twenty-four (24), and the undivided one-third (⅓) interest in the north half (½) of the northwest quarter (¼) and in the southwest quarter (¼) of the northwest quarter (¼) and the whole of the southeast
1007 quarter (¼) of the southwest quarter (¼) of section twenty-eight (28), and the northwest quarter (¼) of the northwest quarter (¼) of section twenty-nine (29), and the west half (½) of the northwest quarter (¼) and the southeast quarter (¼) of the northwest quarter (¼) and the southwest quarter (¼) and the south half of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the south half of the northeast quarter (¼) and the undivided one-third (⅓) interest in the north half of the northeast quarter (¼) and the undivided one-third (⅓) interest in the northeast quarter (¼) of the northwest quarter (¼) of section thirty (30), and the southeast quarter of the northwest quarter (¼) and the southwest quarter (¼) of the southwest quarter (¼) and the northeast quarter (¼) of the southwest quarter (¼) of section thirty-one (31), and the southeast quarter (¼) of section thirty-two (32), and the southwest quarter (¼) of the southwest quarter (¼) and the north half of the southeast quarter and the southeast quarter of the northeast quarter (¼) and the east half of the northwest quarter (¼) of section thirty-three (33), and the north half of the northeast quarter of section thirty-four (34), and the west half of the southwest quarter (¼) and the west half (½) of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the south half of the northeast quarter (¼) of section thirty-five (35), and the west half (½) of the northwest quarter (¼) and the north half (½) of the southwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) and the northeast quarter (¼) of section thirty-six (36); and the following real estate situate in township twenty-one (21) south, range five (5) west, namely: The west half of the northwest quarter (¼) and the east half of the southeast
1008 quarter (¼) and the southeast quarter of the northeast quarter (¼) of section one (1), and the northeast quarter and the west

half (½) of the southwest quarter of section two (2), and the northwest quarter (¼) of the southeast quarter (¼) and the northeast quarter (¼) of the northeast quarter (¼) of section twelve (12), and the north half of the northeast quarter (¼) of section twenty-two (22), and the west half (½) of the southeast quarter (¼) of section twenty-three (23), and the north half (½) of the southwest quarter (¼) and the southwest quarter of the southeast quarter (¼) of section twenty-four (24) and the west half of the southwest quarter (¼) and the southeast quarter (¼) of the northwest quarter (¼) of section twenty-five (25), and the east half (½) of the southeast quarter (¼) of section twenty-six (26), and the northeast quarter (¼) of the northeast quarter (¼) of section thirty-five (35), and the northwest quarter (¼) of the northwest quarter (¼) and the east half (½) of the northeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the undivided one-third (⅓) interest in the southwest quarter (¼) of the northwest quarter (¼) and in the north half (½) of the southwest quarter (¼) and in the northwest quarter (¼) of the southeast quarter (¼) of section thirty-six (36); and the following real estate situate in township twenty-two (22) south, range four (4) west, namely: The north half of the northwest quarter (¼) and the southeast quarter of the northwest quarter (¼) and the south half (½) of section one (1), and the northwest quarter (¼) of the northeast quarter (¼) and the southeast quarter (¼) of the southeast quarter (¼), section two (2), and the northeast quarter (¼) and the south half of the northwest quarter (¼) and the southwest quarter (¼) and the west half of the
1009 southeast quarter (¼) and the southeast quarter (¼) of the southeast quarter (¼) of section four (4), and the southwest quarter of the northeast quarter (¼) of section six (6), and the southeast quarter (¼) of the northeast quarter (¼) of section eight (8), and the east half (½) of the northwest quarter (¼) and the west half (½) of the northeast quarter (¼) of section nine (9), and the southeast quarter (¼) of the northwest quarter (¼) and the north half (½) of the southwest quarter of section ten (10), and the north half (½) of the northwest quarter (¼) and the north half of the southeast quarter (¼) of the northwest quarter (¼) and the east half (½) of the southwest quarter (¼) and the southeast quarter (¼) and the south half (½) of the northeast quarter (¼) and the northeast quarter (¼) of the northeast quarter (¼) of section eleven (11), and the north half (½) of the northwest quarter (¼) and the north half (½) of the northeast quarter (¼) and the southeast quarter of the northeast quarter (¼) and the east half (½) of the southeast quarter (¼) and the southwest quarter (¼) of the southeast quarter (¼) of section twelve (12), and the northwest quarter of the northeast quarter (¼) of section thirteen (13), and the west half (½) of the southwest quarter of section (14), and the west half of the northeast quarter (¼) and the north half (½) of the south half (½) of section fifteen (15), and the northeast quarter (¼) and the south half (½) of section sixteen (16), and the northwest quarter (¼) and the east half (½) of section twenty (20), and the south half (½) of section twenty-one (21), and the east half (½) and the east half (½) of the west half (½) and the northwest quarter (¼) of the northwest quarter (¼) of section twenty-two (22), and the west half (½)

and the west half (½) of the east half (½) of section twenty-three,
1010 and the north half (½) of the northwest quarter (¼) of fractional section twenty-six (26), and the north half (½) of the northeast quarter (¼) of fractional section twenty-seven (27); and the following real estate situate in township twenty-four (24) north, range eleven (11) east, namely: The whole of section one (1), and the east half (½) and the southwest quarter (¼) and the south half (½) of the northwest quarter (¼) of section two (2), and the east half (½) of the northwest quarter (¼) and the north half (½) of the southwest quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) and the southeast quarter (¼) and the west half (½) of the northeast quarter (¼) and the southeast quarter (¼) of the northeast quarter (¼) of section three (3), and the north half (½) and the north half (¼) of the southwest quarter (¼) and the southeast quarter (¼) of section twelve (12), and the north half (½) and the northeast quarter (¼) of the southwest quarter (¼) and the east half (½) of the southeast quarter (¼) of section eleven (11), and the northeast quarter (¼) of section thirteen (13); and the following real estate situate in township twenty-four (24) north, range twelve (12) east, namely: The west half (½) of the west half (½) and the east half (½) of the southeast quarter (¼) of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) of section six (6), and the west half (½) of the southwest quarter (¼) of section five (5), and the west half (½) of the northwest quarter (¼) and the southeast quarter (¼) of the northwest quarter (¼) and the northwest quarter (¼) of the southwest quarter (¼) and the southwest quarter (¼) of the northeast quarter (¼), and the undivided one-half (½) interest in the southwest quarter of the southwest quarter (¼) of section seven (7), and the northwest quarter (¼)
1011 of the northwest quarter (¼) and the east half (½) of the southeast quarter (¼) of section eighteen (18), and the northwest quarter (¼) of the southwest quarter (¼) and the east half (½) of the southwest quarter (¼) of the southwest quarter (¼) of section seventeen (17), and the south half (½) of the northeast quarter (¼) and the northeast quarter (¼) of the northeast quarter (¼) of section twenty (20), and the northwest quarter (¼) of the southwest quarter (¼) of section ten (10), and the southeast quarter (¼) and the south half (½) of the southwest quarter (¼) and that portion of the northwest quarter (¼) of the southwest quarter (¼) which lies south of the Centreville and Montevallo dirt road, all in section nine (9), and the southeast quarter (¼) of the southeast quarter (¼) and all that portion of the entire southeast quarter (¼) of section eight (8) which lies south of the Centreville and Montevallo dirt road; and the mineral interest in and the mining rights to the following tracts of land, namely: The east half (½) of the northwest quarter (¼) of section seventeen (17), and the southwest quarter (¼) of section twenty-five (25), and the south half (½) of the southeast quarter of section twenty-six (26), and the northeast quarter (¼) of the northeast quarter (¼) of section thirty-five (35), and the northeast quarter (¼) of the northwest quarter (¼) of section thirty-six (36), all of the above tract being in township twenty-one (21) south, range four (4) west, and the southwest quarter (¼) of section two (2), and the north-

east quarter (¼) of the southeast quarter (¼) of section three (3), both of the above tracts being in township twenty-two south, range four (4) west, and the entire interest in the southeast quarter (¼) of the southeast quarter (¼) of section thirty-two (32), township twenty (20) south, range three (3) west.

1012 And the following-described real estate situate in Chilton county, State of Alabama, namely: The northwest quarter (¼) of section twenty-one (21) and the north half (½) of the northwest quarter (¼), section twenty-eight (28), and the north half (½) of the northwest quarter (¼) of section sixteen (16), and the west half (½) of the southwest quarter (¼) of section fourteen (14), and the west half (½) of the east half (½) of the southwest quarter (¼) of section fourteen (14), all of the above-described land being in township twenty-four (24) north, range twelve east; and the west half (½) of the northeast quarter and the northwest quarter (¼) and the northeast quarter (¼) and the west half (½) of the southwest quarter (¼) and the northwest quarter (¼) of the southeast quarter (¼), all in section thirty (30), township twenty-four (24) north, range thirteen (13) east; and the west half (½) of the southeast quarter (¼) and the southwest quarter (¼) of the northeast quarter (¼), and five acres off the east half (½) of the southeast quarter (¼), commencing at the ford of Dry creek and running along the Montgomery road fifty (50) rods south, thence due south, leaving grave-yard on west side of line, and situated in section nineteen (19), township twenty-four (24) north, range thirteen (13) east; also the northeast quarter (¼) of the northeast quarter (¼) of section twenty-six (26), township twenty-four (24) north, range twelve east; also the north half (½) of fraction B, township twenty-four (24) north, range twelve (12) east, except seventeen (17) acres off the northwest corner and four acres for the Concord church; also the

1013 north half (½) of fractional section twenty-five (25), township twenty-four (24) north, range twelve (12) east, except four acres off the northeast corner; also the northeast quarter and the south half (½) of the southwest quarter (¼) of section eighteen (18), township twenty-four (24) north, range thirteen east; also all the mineral and mining rights on the south half (½) of fraction B of section thirteen, and the southeast quarter (¼) of the southeast quarter (¼) of section fourteen (14), and the northeast quarter of the northeast quarter (¼) of section twenty-three (23), and the northwest quarter (¼) of the southeast quarter (¼) of the northeast quarter (¼) of section twenty-three (23), all in township twenty-four (24) north, range (12) east, and the northwest quarter (¼) of the southeast quarter (¼) of section eighteen (18), township twenty-four (24) north, range thirteen (13) east, and all the mineral and mining rights on the whole of section fifteen (15), township twenty-four (24) north, range twelve (12) east, except the northwest quarter of the northwest quarter (¼); also the mineral and mining rights on the following-described lands in township twenty-four (24) north, range twelve (12) east, namely: The northwest quarter (¼) of the northeast quarter (¼) and the southeast quarter (¼) of the southeast quarter (¼) of section sixteen (16), and the north half (½) of section twenty-two (22), and the northeast quarter of section twenty-one (21), and

the west half (½) of the southwest quarter (¼) of section twenty-one (21).

And also the following-described personal property of the party of the first part in the county of Bibb, State of Alabama, used and employed in and about the iron-ore banks, ore-washer, stock sheds,
1014 blast furnace, store, office, stock yard, blacksmith shops, carpenter shops, coking ovens, coal-washers, railways, rolling mill, nail factory, cooper shop, pattern shops, machine shop, foundry, storehouses, offices, houses, and other places owned or controlled by the party of the first part as follows: Two locomotives, fifty railroad cars for coal, coke, and ore, forty ore cars, one hundred wheelbarrows, two hundred picks, forty drills, forty hammers, twenty mules and harness, four wagons, six sets of blacksmith tools, rolling mill, nail factory, machine shop, foundry and pattern shop tools, two hundred shovels, ten carts, six sets of ropes and sheave blocks, office furniture and safes, goods in store at furnace and Brierfield, and all the limestone, brick, ore, coke, coal, pig-iron, muck bar, nail plate, merchant bar, nails, kegs, castings, railroad iron, spikes, & track tools, money, bills receivable, accounts, and credits of every kind, wherever situate; and also the following personal property in the county of Shelby, State of Alabama, employed in and about the coal mines and quarries of the party of the first part: One hundred and fifty mine cars, eight mules & harness, two wagons, one hundred shovels, one hundred picks, fifty drills, one hundred hammers, four hundred kegs powder, three boxes dynamite, wire and hemp ropes, sheave wheels, oil, lamps, car wheels and axles, and irons, cross-ties, railroad iron, timber, lumber and props, two sets blacksmith tools and iron in blacksmith shops, scales, shelves, counters, and stock of goods in store, and the surplus, if any
1015 there be, from proceeds of sales of nails now held as collateral for loans in the cities of Mobile, Alabama, and Memphis, Tennessee.

And also any and all articles of personal property belonging to the party of the first part that are not herein specified, including all debts of every kind due to it and all rights of action and credits of every kind; and the party of the first part will at any time, on the request of the party of the second part, furnish to him or to his successor in the trusts and conveyances in said deed hereinabove set forth — render exact inventories and schedules of the property conveyed in said deed and herein more specifically described, and will in like manner and on like request of said trustee or his successor in office deliver to him or them all writings, deeds, instruments, and muniments of title relating to the real and personal property described and included or intended to be included, by whatever description in said deed of conveyance hereinabove set forth, that are in the possession or under the control of the party of the first part:

To have and to hold the real and personal property conveyed in said deed of trust hereinabove set forth and in this instrument more fully and specifically described to the party of the second part, as trustee, and to his successors in said trust in the same manner, and to the same extent, and to the same intent and purpose, and

subject to the same trusts, and with the same powers therein conferred, and subject to the same agreements and covenants, and for the same purposes as are expressed in said deed of conveyance hereinabove set forth.

1016 In witness whereof the said party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its president and attested by its secretary on this the 29th day of July, A. D. 1887.

THOMAS J. PETER,
President of the Brierfield Coal & Iron Company of Alabama.

[Seal B. C. & I. Co.]

Attest: E. T. PETER, *Secretary.*

Witness:
J. B. JEMISON, July 29, '87.
E. E. LEUVIN, July 29, '87.

THE STATE OF ALABAMA, }
Bibb County. }

I, Fred. Pfaff, a justice of the peace in and for said State and county, hereby certify that Thomas J. Peter, whose name is signed to the foregoing conveyance as president of the Brierfield Coal and Iron Company of Alabama and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily as president of said company and by its order and direction, and that he affixed the seal of the company thereto on the day the same bears date.

Given under my hand this twenty-ninth day of July, A. D. 1887.

FRED. PFAFF,
Justice of the Peace.

THE STATE OF ALABAMA, }
Chilton County. }

1017 I, H. J. Callen, judge of the probate court in and for said county, do hereby certify that the foregoing conveyance was filed for record on the 2nd day of August, 1887, and that the same was this day duly recorded in my office in vol. 17 of Deeds, on pages 258.

Given under my hand this the 4th day of August, 1887.

H. J. CALLEN,
Judge of Probate.

THE STATE OF ALABAMA, }
Bibb County. }

I hereby certify that the within conveyance was filed in my office for record on the 30th day of July, 1887, at 9 o'clock a. m., and duly recorded in vol. Y of Deeds, pages 431 to 458, on the 30th day of July, 1887.

JNO. S. GARDNER,
Judge of Probate.

THE STATE OF ALABAMA, }
Shelby County. }

I hereby certify that the within conveyance was filed in my office for record on the 1st day of August, 1887, and recorded in vol. 19, on pages 54 to 84.

JAMES T. LEEPER,
Judge of Probate.

EXHIBIT No. 4.

Contract between C. C. Huckabee & T. J. Peter, Feb'y 26, '82.

This memorandum of agreement made and entered into this the 25th day of February, 1882, between Caswell C. Huckabee, of Bibb county, State of Alabama, party of the first part, and Thomas J. Peter, of the city of St. Louis, party of the second part, witnesseth: That in consideration of the sum of forty-five thousand six hundred and twenty dollars to be well and truly paid to the said party of the first part by the said party of the second part, in accordance with the terms of this agreement as hereinafter made and provided, said party of the first part agrees to convey to the party of the second part and his assigns, by a good and sufficient warranty deed,
1018 the following tracts or parcels of land, situated in the counties of Bibb and Shelby and State of Alabama, to wit: The N. E. $\frac{1}{4}$ of sec. 25 and the S. E. $\frac{1}{4}$ of sec. 24 and the S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of sec. 24, the above tracts being in township 24 north and range 11 east, in Bibb county; also the N. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ of sec. 30 and the E. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ and the W. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of sec. 30; and the following tracts in section 19, viz: The S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$, and a tract of 33 acres acquired by deed from Thomas Peters, and a tract of $3\frac{1}{6}$ acres from Dan'l W. Prentis and French Nabors, and a tract of ten acres in the west half of the S. E. $\frac{1}{4}$ of said section, lying west of the Alabama and Tennessee River railroad, acquired from French Nabors, and a tract of sixteen and $\frac{3}{100}$ acres acquired by deed from J. W. Mahan, and a tract of ten acres in the northwest quarter of the S. W. $\frac{1}{4}$, and a tract of eight acres in the S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$, acquired by deed from Dan'l W. Prentis, and a tract of land in the southeast part of the S. W. $\frac{1}{4}$ bounded as follows: Beginning at the S. E. corner of the west half of said section, and running thence west on the section line 57 poles to a stake, thence north 57 poles to a stake, thence east 57 poles to the east line of said tract, thence south on said line to the beginning, making a block of about 20 acres; also the tract described as follows: Commencing at the half-section stake of the south boundary line of said section, thence east on said line 70 yards, thence north to the middle of Mahan's creek, thence down said creek to the middle line of said section, thence south on said line to the
1019 place of beginning, all in section 19, together with the Brierfield rolling mill, foundry, machine shop, store-house, tenant-houses, and the improvements and personal property of every kind and description pertaining to the aforementioned Brierfield prop-

erty. The aforementioned tracts in sections 19 and 30 are in township 24 north and range 12 east, and situated in Bibb county, reserving and excepting therefrom the following-described tracts now owned by R. L. McCalley and F. H. Hawks, and described and bounded as follows, to wit: All the land lying in the southwest quarter of S. E. ¼ of sec. 19, town. 24, range 12 E., on the north side of Mahan's creek and on the east side of the E. T. V., & G. R. R., and in the bend of said creek, on which is now situated the residence of said McCalley and the saw-mill of said Hawks; also all that tract of land in the S. W. ¼ of the S. E. ¼ and the S. E. ¼ of the S. E. ¼ of same section and range, now owned by the said R. L. McCalley, lying on the south side of said creek and north of the old Ford road, said tract being known as the Peninsula tract; and the said C. C. Huckabee further agrees to assign to the said T. J. Peter a certain note of F. H. Hawks for two hundred thousand feet of lumber; and the said C. C. Huckabee further agrees to sell and convey to the said T. J. Peter, by a good and sufficient warranty deed, the following tracts of land situated in the county of Shelby, State of Alabama, to wit: The S. E. ¼ of sec. 12, and the N. E. ¼ of sec. 13, and the N. W. ¼ of the S. W. ¼ and the undivided half of the S. W. ¼ of the S. W. ¼ of sec. 7, and the N. W. ¼ of the N. W. ¼ of sec. 18, and the undivided one-
1020 fifth interest in the following tracts and parcels of land lying in Shelby county, State of Alabama, viz.: The E. ½ of the S. E. ¼ and the S. W. ¼ of the S. E. ¼ and the S. E. ¼ of the S. W. ¼ of sec. 6, and the S. W. ¼ of the N. E. ¼ and the N. W. ¼ of sec. 7, all in township 24 north, range 12 east; also the S. ½ of the N. E. ¼ of sec. 12, town. 24 north, range 11 east; also the W. ½ of the S. W. ¼ of sec. 5, town. 24 north, range 12 east, said tracts being purchased from William F. Aldrich; also the S. W. ¼ of the N. E. ¼ of sec. 12, town. 24 north, range 11 east, purchased from B. B. Davis. The tracts purchased from said Aldrich and Davis are to be conveyed by quitclaim deed. All the above-mentioned tracts in sections 12 and 13 are in township 24 north and range 11 east, and those in sections 7 & 18 are in township 24 north and range 12 east, the party of the first part reserving to himself the use of all the lands above described purchased from E. M. Carleton, lying and being in Shelby county, for agricultural purposes, and the use of so much of the timber on said land as may be necessary for the purposes of fencing, fuel, and building connected with the uses of said lands for agricultural purposes, and also reserving the use and property in the buildings now on said lands south of Shoal creek; and it is further agreed that the party of the second part shall not have the right under this contract to erect any improvements or buildings upon that portion of the above-described land in Shelby county south or west of Shoal creek; and the said party of the first part agrees to receive the payment of the amount hereinbe-
fore provided to be paid to him, as follows: The sum
1021 of eight hundred dollars, the receipt of which is hereby acknowledged, and the further sum of sixteen thousand and two hundred dollars, to be paid on or before the first of May, 1882, and the sum of one thousand dollars, to be paid each on June the

first, July the first, August the first, September the first, October the first, November the first, and December the first of the year 1882, and on the first of January, the first of February, and the first of March, 1883, with interest on each of said payments from March the first, 1882, to the date of payment, at the rate of 8 per cent. per annum; and the further sum of eleven hundred and twenty dollars on April the first, 1883, with interest thereon, at the rate of 8 per cent. per annum, from March the first, 1882; said notes each to be secured by the deposit with said party of the first part of a mortgage bond for the sum one thousand dollars, said bond to be a portion of the bonds to be issued by an incorporated company for the ownership and management of the above-described property; said mortgage to be for the sum of one hundred thousand dollars and drawing interest at the rate of 8 per cent., payable semi-annually, and to extend for the period of twenty years, said bonds only to be issued by said company in payment for property or money at par value; and said party of the first part further agrees to receive for the remainder of the purchase-money of the above-described property the sum of seventeen thousand five hundred dollars
1022 in the above-mentioned bonds, and the sum of thirty-five thousand dollars in the capital stock of the incorporated company to be so organized.

Said party of the second part agrees to purchase from the said party of the first part the above-described property and to pay for it the amounts on the terms and time above described, and the said party of the second part agrees, in connection with the party of the first part, to organize a company incorporated under the laws of the State of Alabama, with a capital stock of two hundred thousand dollars, for the purpose of owning and opperating said above-mentioned property; and the party of the second part agrees to pay for improvements on said property and to furnish an opperating capital, so that the amount, including the purchase-money above described, shall be equal to the sum of seventy thousand dollars; and the said party of the second part further agrees to sell the above-described property to the above-mentioned incorporated company for the sum of one-hundred and forty thousand dollars of its capital stock and the sum of seventy thousand dollars of its first-mortgaged 8 per cent. bonds, above described.

It is understood that the bonds deposited with the party of the first part are to be held as collateral security for the payment of said notes, and as each thousand-dollar note is paid the bond held as collateral to secure the payment of said note is to be returned to the said party of the second part.

1023 In witness whereof we have hereunto subscribed our names in duplicate the day and year first above written.

C. C. HUCKABEE.
T. J. PETER.

Witness:
W. G. HUCKABEE.

2 | 26 | '82.

Besides the payment of ($800) eight hundred ($1,000.00) dollars, receipted for in the body of the above agreement, I have this day received ($200) two hundred dollars in payment on this contract.

C. C. HUCKABEE.

2 | 27 | '82.

Received of T. J. Peter the sum of eight thousand ($8,791.00) seven hundred and ninety-one dollars on the within contract.

C. C. HUCKABEE.

2 | 28 | '82.

Received of T. J. Peter, by sight draft on Preston B. Plumb, the sum of six thousand dollars on the within contract.

C. C. HUCKABEE.

STATE OF ALABAMA, }
Dallas County. }

Whereas, on or about the 25th day of February, A. D. 1882, the undersigned entered into a written contract and agreement for the *the* sale & purchase of certain real & personal property in Bibb & Shelby counties, in this State, bearing date F'b'y 25th, A. D. 1882, & which contract is hereby referred to for greater certainty;

And whereas doubts have arisen in regard to the titles to some of said real property, which it may take some time to remove: Now, it is further stipulated and agreed between the undersigned, parties to said contract and agreement, that in consideration of the payment of the sum of twenty thousand dollars, including the payments already made by said Thomas J. Peter and the assumption by him of the payment of certain notes, made by the said Huckabee
1024 to one E. D. Carleton, for the sum of thirty-three hundred and thirty-three & $\frac{33}{100}$ dollars, the said Huckabee agrees to transfer by warranty deed to the Brierfield Coal & Iron Company, a corporation hereafter to be created, when organized, all of the property contracted to be sold & conveyed to the said Thos. J. Peter by the said agreement of the 25th of Feb'ry, A. D. 1882, between the undersigned; and, further, to leave the remainder of the sum agreed to be paid to him by said Thos. J. Peter for said property for the purchase thereof in the hands of said Brierfield Coal & Iron Company until the doubts in regard to the defects in the titles of said property are removed or made satisfactory to said company, when the balance of said purchase-money is to be paid to said Huckabee in the capital stock and bonds of said company, when organized, at the same value as the same shall be paid to the other subscribers to the capital stock of said company. The said Huckabee agrees to take as many shares of the capital stock of said company as the balance of said purchase-money, after deducting said cash payment and payment of said notes, will entitle him to, on same terms as other subscribers to the capital stock of said company.

In witness whereof the said Caswell C. Huckabee — Thos J. Peter

have hereto set their hands & seals this the 24th day of April, A. D. 1882.

C. C. HUCKABEE. [SEAL.]
T. J. PETER. [SEAL.]

EXHIBIT No. 5.

BRIERFIELD, *May 8th*, 1882.

Received from Caswell C. Huckabee, Esqr., the sum of
1025 fifteen thousand dollars, being payment in full on his subscription to the capital stock of the Brierfield Coal & Iron Company.

$15,000.00. T. J. PETER,
Pres't B. C. & I. Co.

EXHIBIT No. 6.

Deed of Caswell C. Huckabee to Brierfield Coal and Iron Company.

STATE OF ALABAMA, }
Bibb County. }

This indenture, made this the eighth day of May, A. D. 1882, between Caswell C. Huckabee, party of the first part, and the Brierfield Coal and Iron Company, a private corporation duly incorporated and organized under the laws of the State of Alabama, and having its principal place of business at Brierfield, in the county and State aforesaid, party of the second part, witnesseth:

That the party of the first part, in consideration of the sum of forty-five thousand dollars, to him in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents doth hereby grant, bargain, sell, and convey, unto the party of the second part the following-described real and personal property, to wit: The northeast quarter of section twenty-five, and the southeast quarter of section twenty-four and the southeast quarter of the southwest quarter of section twenty-four both these sections being in township twenty-four north and range eleven east; also the north half of the northwest quarter of section thirty, and the east half, the southeast quarter of the northwest quarter, and the west half of the northwest quarter of the northeast quarter of section thirty; also the following tracts in section nineteen, which, together with above-
1026 described section thirty, is in township twenty-four north and range twelve east, viz: The southwest quarter of the southwest quarter and the south half of the south half of the northwest quarter of the southwest quarter and the southeast quarter of the southwest quarter (except two acres lying in the northeast corner, east of the centre of Mahan's creek); also all that portion of the west half of the southeast quarter lying north and west of the East Tennessee, Virginia and Georgia railway; also the following tract: Commencing at the middle of section nineteen, on the south boundary line of said

section, thence east on said section line to Mahan's Ford road, thence north to the centre of Mahan's creek, thence down said creek to the middle line of section nineteen, running north and south, thence south to the first point, situated in the west half of the west half of the southeast quarter, all of the above-mentioned lands embracing about five hundred and sixty-five acres, being situate in Bibb county and the State of Alabama, together with the Brierfield rolling mill, foundry, machine shop, storehouse, tenant and all other houses, and all the improvements and personal property of every kind and description pertaining to the aforementioned Brierfield property.

Also the following-described tracts of land situate in Shelby county, in the State of Alabama, to wit: The southeast quarter of section twelve and the northeast quarter of section thirteen, in township twenty-four north and range eleven east; also the northwest quarter of the southwest quarter (N. W. ¼ of S. W. ¼) and the un-
1027 divided half of the southwest quarter of the southwest quarter of section seven and the northwest quarter of the northwest quarter of section eighteen, being in township twenty-four north and range twelve east. The party of the first part reserves to himself the use of all the lands above described in Shelby county for agricultural purposes, and the use of so much of the timber on said land as may be necessary for the purposes of fencing, fuel, and building purposes connected with the use of said land for agricultural purposes, and also reserving the use and property in the buildings now on said lands south of Shoal creek; and it is further agreed that the party of the second part shall not erect any buildings on said lands south or west of Shoal creek, which shall interfere with the improved lands, and without the consent of the party of the first part; to have and to hold unto the party of the second part, its successors and assigns forever, in fee simple, the above-described real and personal property, with all and singular the hereditaments and appurtenances thereto belonging and appertaining, and the party of the first part hereby warrants the title to said property, and covenants that said property is free from all incumbrances, and also warrants the peaceable and undisturbed possession of said property unto the party of the second part and its successors, in fee simple, forever.

In witness whereof the party of the first part has hereunto set his hand and seal the day and year first above written.

C. C. HUCKABEE. [SEAL.]

Witnees:

—— ——.

STATE OF ALABAMA, *County of Bibb:*

1028 I, Jesse W. Mahan, a justice of the peace in and for said county and State, do hereby certify that Caswell C. Huckabee, whose name is signed to the foregoing conveyance and who is personally known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand this eighth day of May, A. D. 1882.

J. W. MAHAN,
Justice of the Peace.

STATE OF ALABAMA, *Bibb County:*

I hereby certify that the within conveyance was filed in my office for record on the 9th day of May, 1882, at — o'clock — m., and duly recorded in vol. S of Deeds, page- 160 to '2, on the 9th day of May, 1882.

JNO. S. GARDNER,
Judge of Probate.

EXHIBIT No. 7.

Order to Retain Securities.

T. J. Peter, pres't Brierfield Coal and Iron Company:

In accordance with the contract between us for the sale of the Brierfield rolling-mill property we authorize you to retain in the hands of the company until title to said property is quieted or made satisfactory to said company the bonds and stock of said company, which the undersigned would obtain by reason of the payment of their subscription to the capital stock of said company, and the further sum of sixteen hundred and sixty-six and $\frac{67}{100}$ dollars, to be paid to C. C. Huckabee in cash as soon as said title is made satisfactory to said company.

C. C. HUCKABEE.
R. L. McCALLEY.

1029 EXHIBIT No. 8.

Contract Between Bibb Furnace & Brierfield Coal & Iron Co.—Purchase of Property.

Memorandum of agreement made and entered into this sixth day of February, A. D. 1883, between William D. Carter and Kearsley Carter and the Bibb Furnace Company of Alabama, parties of the first part, and the Brierfield Coal and Iron Company of Alabama, party of the second part, witnesseth:

In consideration of the faithful performance by the party of the second part of the payments hereinafter agreed to be made and the sum of two thousand dollars in hand paid, the receipt whereof is hereby acknowldged, the parties of the first part agree to sell and convey by a good and sufficient war-antee deed (the personal property) in list hereto attached, and all goods now in storehouse at Bibb Furnace, and all the real estate, tenements, and hereditaments connected with the Bibb Furnace property, situated in Bibb county, State of Alabama, more particularly described as follows, viz: The S. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ and the S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ and the S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of section 28; all of section 27; all of section 26, and the land lying south of the tram-road from Brierfield Mills to Bibb Fur-

nace, in S. E. ¼ of section 23; the south ½ of section 25; all of section 33; all of section 34, except the N. E. ¼ of the S. E. ¼; the N.W. ¼ of section 35, except the S. W. ¼ thereof; the W. ½ of N. E. ¼ and the land lying north of the grade of the Ashly and Bibb Furnace R. R., in the N. E. ¼ of section 35, and the S. W. ¼ of S. W. ¼ of section 35; all of the W. ½ of N. W. ¼ of section 36 that lies north of the grade of Ashly & Bibb Furnace R. R., and the W. ½ of S. E. ¼ of
1030 section 36, the above lands all in township 24 north, range 11 east; also the S. ½ of the N. ½ and the N. E. ¼ of N. E. ¼ and N. E. ¼ of S. W. ¼ of section 5; also the N. E. ¼ of section 4; also all of section 3, except the S. E. ¼ of the N. E. ¼ and the N. E. ¼ of the S. E. ¼ of said section; also all of section 2, except the southwest quarter of the N. E. ¼ and the N. W. ¼ of the S. W. ¼ and the N. E. ¼ of N. E. ¼ of said section; also the N. E. ¼ and the E. ½ of S. E. ¼ of section 10; also all of section 11, except S. E. ¼ of S. W. ¼ and S. ½ of S. E. ¼ of said section; also the N. W. ¼ of the S. W. ¼ of section 12, all in township 23 north, range 11 east; also the following lands purchased by deed from A. J. Day, dated October 16, 1880, by C. C. Huckabee: All of section one, except the S. ½ of S. W. ¼, in township 23 north, range 11 east; also the S. ½ of N. E. ¼ and N. E. ¼ of S. E. ¼ of section 31; also the S. ½ of N. W. ¼ and the N. W. ¼ of N. E. ¼ and the S. ½ of S. W. ¼ and the W. ½ of S. E. ¼ of section 32, township 24 north, range 12 east; also the N. W. ¼ of N. W. ¼ of section 5, containing in all 6,880 acres (more or less) and being the same land conveyed by deed from C. C. Huckabee to W. D. Carter and A. K. Sheppard, Jr., by deed dated Jan. 10, 1881, except eighty acres in sections 2 & 3, above received.

Also the iron ore on the following-described lands conveyed by deed of J. N. Smith & C. C. Huckabee to W. D. Carter & A. K. Sheppard, Jr., on the 7th January, 1887, and more particularly described as follows, viz: All of section 22 and all the lands owned by said Smith in section 21 and the N. ½ of section 28 and the W. ½ of S. ½ of N. W. ¼ of section 28 and the W. ½ of S. W. ¼ of section 28 and the
1031 S. ½ of S. W. ¼ of section 23, all being in township 24 north, range 11 east, in Bibb county and State of Alabama, containing in all 1,640 acres, more or less; also the E. ½ of S. W. ¼ & N. W. ¼ of S. W. ¼ and the W. ½ of S. E. ¼, in section 4, township 23 north, and range 11 east; also the E. ½ of S. W. ¼ and the W. ½ of S. E. ¼ of section 30, township 24 north, and range 12 east; and the parties of the first part will receive in payment therefor the sum of ninety thousand dollars at the times and in the amounts as follows, viz: During the month of February, 1883, the further sum of four thousand two hundred and fifty dollars, and during the month of March, 1883, the sum of six thousand two hundred and fifty dollars, and during the month of April, 1883, the sum of six thousand two hundred and fifty dollars, and during the month of May, 1883, the sum of six thousand two hundred and fifty dollars, and such monies shall be used to pay off all liens of every description on said aforementioned property, and as said liens are paid off they shall be transferred by assignment to T. J. Peter and be held by him as collateral security for the monies so advanced until June 10th, 1883,

when a warrantee deed shall be made to the party of the second part by the parties of the first part and a quitclaim deed by George L. Douglass to all the real and personal property above enumerated, and at that time all liens against said property shall be cancelled in the record so as to leave it free and unencumbered, except the mort-
gage hereinafter provided for and the suits now pending in
1032 Bibb county chancery court and elsewhere; and the parties of the first part agree to protect the party of the second part against such suits and such other suits as may grow out of said suits now pending; and the parties of the first part will, on making said deed, receive for the remainder of the consideration to be paid by the party of the second part their notes for the following amounts, secured by a mortgage upon the real estate provided herein to be conveyed, viz: A note for twelve thousand five hundred dollars, with interest at the rate of six per cent. per annum, payable nine months after its date, and a note for twelve thousand five hundred dollars, with interest at the rate of six per cent. per annum, payable at or before fifteen months after its date, and a note for thirteen thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, payable at or before two years from its date, and a note for like amount as above ($13,333.33), payable at or before three years from its date, and a note for a like amount as above ($13,333.33), payable at or before four years from its date, all of said last three notes to bear interest at the rate of six per cent. per annum from date to payment of each note; and the parties of the first part agree that the party of the second part may enter upon and take possession of the property above described on March 1st, 1883.

And the party of the second part agrees to buy of the parties of the first part the property, real and personal, above described, and
to pay therefor the sum of ninety thousand dollars, as here-
1033 inbefore set forth.

And whereas the lands in section five, township 23 north, range 11 east, amounting to two hundred and forty acres, conveyed by C. C. Huckabee in fee to parties of the first part, did not belong to said Huckabee, except the timber right, the parties of the first part are — only to convey the timber right in said lands, but are to assign their claim for damages arising out of said transfer against C. C. Huckabee to the party of the second part.

Witness our hands and seals the day and year first above written.

BIBB FURNACE CO.,
By W. D. CARTER, *Pt.*
W. D. CARTER.
KEARSLEY CARTER,
By W. D. CARTER.
BRIERFIELD COAL & IRON COMPANY,
By T. J. PETER, *Pres't.*

Attest: JOHN G. MURRAY.

THE STATE OF ALABAMA, }
Shelby County. }

I, H. L. Oliver, a notary public for said county & State, hereby certify that the Bibb Furnace Company, by its president, W. D. Carter; W. D. Carter, Kearsley Carter, Jr., Brierfield Coal and Iron Company, by its president, Thos. J. Peter, whose names are signed to the foregoing instrument or agreement and who are known to me or have been made known to me, acknowledged before me on this day that, being informed of the contents of the foregoing agreement, they, the said Bibb Furnace Company, by its president, W. D. Carter, and W. D. Carter for himself, Kearsley Carter, Jr., the said Brierfield Coal and Iron Company, by its pres't, Thos. J. Peter, *and* executed the same voluntarily on the day the same bears date.

1034 Given under my hand this 4th day of April, 1883.

H. L. OLIVER,

[SEAL.] *N. P., ex Off. J. P., S. C., State of Ala.*

I hereby certify that the within agreement was filed for record on April 11, 1883, and duly recorded in Book "S" of Deeds, &c., pages 559, 560, 561, 562
359, 360, 361, & 362, on April 18, 1883.

J. S. GARDNER,
Judge Probate,
By M. F. GARDNER, *Clerk.*

EXHIBIT No. 9.

Deed. The Bibb Furnace Company and W. D. & K. Carter to The Brierfield Coal & Iron Company.

STATE OF ALABAMA, }
Bibb County. }

This indenture, made and executed this the ninth day of June, eighteen hundred and eighty-three, between the Bibb Furnace Company, a corporation duly incorporated under the laws of Alabama, having its office in Bibb county, in said State, Kearsley Carter, Jr., and William D. Carter and Julia W. Carter, his wife, parties of the first part, and the Brierfield Coal and Iron Company of Alabama, a corporation duly incorporated under the laws of the State of Alabama, party of the second part, witnesseth:

That the parties of the first part, for and in consideration of the sum of ninety thousand dollars to them in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey, unto the party of the second part the personal property embraced and de-
1035 scribed in a schedule hereto attached, marked A, and all the real estate connected with and belonging to the parties of the

first part in Bibb county, in the State of Alabama, and more particularly described as follows, to wit:

The southeast quarter and the northeast quarter of the southwest quarter and the southeast quarter of the northwest quarter and the south half of the northeast quarter of section twenty-eight, all of sections twenty-six and twenty-seven, and the land lying south of the tram-road from the Brierfield Mills to Bibb Furnace, in the southeast quarter of section twenty-three, the south half of section twenty-five, all of section thirty-three, all of section thirty-four except the northeast quarter of the southeast quarter thereof, the northwest quarter of section thirty-five except the southwest quarter thereof, the west half of the northeast quarter and the land lying north of the grade of the Ashby and Bibb Furnace railroad in the northeast quarter of section thirty-five, and the southwest quarter of the southwest quarter of section thirty-five, all of the west half of the northwest quarter of section thirty-six that lies north of the grade of the Ashby and Bibb Furnace railroad, and the west half of the southeast quarter of said section thirty-six, all of the above-described lands being in township twenty-four north and range eleven east; also the south half of the north half and the northeast quarter of the northeast quarter and the northeast quarter of the southwest quarter of section five; also the northeast quarter of section four; also all of section three except the southeast quarter of the northeast quarter and the northeast quarter of the southeast
1036 quarter of said section; also all of section two except the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter and the northeast quarter of the northeast quarter of said section; also the northeast quarter and the east half of the southeast quarter of section ten; also all of section eleven except the southeast quarter of the southwest quarter and the south half of the southeast quarter of said section; also the northwest quarter of the southwest quarter of section twelve, all in township twenty-three north and range eleven east; also the following lands purchased by C. C. Huckabee from A. J. Day by deed bearing date October 16th, 1880, to wit: All of section one except the south half of the southwest quarter, township twenty-three north and range eleven east; also the south half of the northeast quarter and the northeast quarter of the southeast quarter of section thirty-one; also the south half of the northwest quarter and the northwest quarter of the northeast quarter and the south half of the southwest quarter and the west half of the southeast quarter of section thirty-two, township twenty-four north and range twelve east; also the northwest quarter of the northwest quarter of section five, township twenty-three north, range twelve east, containing in the aggregate six thousand eight hundred and eighty acres, more or less, and being the same lands conveyed by C. C. Huckabee to W. D. Carter and A. K. Sheppard, Jr., by deed bearing date January
1037 10th, 1881, except eighty acres in sections two and three above reserved; also the iron ore on the following-described lands conveyed by deed of I. N. Smith and C. C. Huckabee to W. D. Carter and A. K. Sheppard, Jr., bearing date January 7th, 1881, and

more particularly described as follows, to wit: All of section twenty-two, and all the lands owned by said Smith in section twenty-one, and the north half of section twenty-eight, and the west half of the south half of the northwest quarter of section twenty-eight, and the west half of the southwest quarter of section twenty-eight, and the south half of the southwest quarter of section twenty-three, all in township twenty-four north, range eleven east, containing in the aggregate sixteen hundred and forty acres, more or less; also the east half of the southwest quarter and the northwest quarter of the southwest quarter and the west half of the southeast quarter of section four, township twenty-three north and range eleven east; also the east half of the southwest quarter of section thirty, township twenty-four north, and range twelve east; but it *is* expressly understood that the parties of *of* the first part convey only the timber right in the south half of the north half and the northeast quarter of the northeast quarter and the northeast quarter of the southwest quarter of section five, township twenty-three, range eleven, in lands above described; but they transfer and assign to the party of the second part all claim for damages which they may have against C. C. Huckabee for a breach of warranty in the sale of said last-mentioned tract of land to said W. D. Carter and A. K.
1038 Sheppard, Jr., under and by his deed, bearing date January 10th, 1884, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as equity, of the said parties of the first part of, in, or to the above-described premises and every part and parcel thereof; to have and to hold all and singular the above-described premises unto the said party of the second part and its successors and assigns forever; and the said parties of the first part and their heirs and successors the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said parties of the first part, their heirs and successors, and against all and every person or persons whomsoever lawfully claiming and to claim the same, shall and will warrant and by these presents forever defend.

And whereas there are now pending certain suits against said Bibb Furnace Company and said W. D. and Kearsley Carter, Jr., and other suits are threatened in the chancery court of Bibb county and elsewhere, it is therefore expressly agreed and stipulated that the parties of the first part will defend, at their own cost and expense, all of said suits now pending, as well as such suits as may hereafter be commenced growing out of suits now pending,
1039 and hold the parties of the second part harmless against all such pending and threatened suits growing out of suits now pending.

In testimony whereof the parties of the first part have hereunto set their hands and seals on the day and year first above written, the said Bibb Furnace Company acting by the said W. D. Carter, president, and Kearsley Carter, Jr., secretary of said company, being

thereunto authorized by a resolution of the stockholders of said Bibb Furnace Company adopted on the — day of June, 1883.

(The words "growing out of suits now pending" interlined between 50 & 51 lines, on 5th page, also the words "last mentioned" interlined between 28 & 27 lines, on 4th page, before signing.)

BIBB FURNACE CO., [L. S.]
By W. D. CARTER, *Pt.*
W. D. CARTER, [L. S.]
KEARSLEY CARTER, JR. [L. S.]
JULIA W. CARTER. [SEAL.]

Witnesses:

A. A. WILEY.
GEO. L. DOUGLASS.

[Seal Bibb Furnace Co.]

Attest: KEARSLEY CARTER, JR.,
Secretary Bibb Furnace Company.

THE STATE OF ALABAMA, }
Bibb County. }

I, George B. Hean, hereby certify that Kearsley Carter, J., William D. Carter, and Julia W. Carter, his wife, whose names are signed to the foregoing conveyance, who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they severally executed the same voluntarily on the day the same bears date.

And I further certify that William D. Carter, as president of the Bibb Furnace Company, a corporation organized and created under the laws of Alabama, acknowledged before me this day that
1040 he signed the name of said Bibb Furnace Company voluntarily on the day the same bears date after being fully informed of the contents of said conveyance.

Witness my hand & seal this 9th day of June, A. D. 1883.

GEO. B. HEAN, [SEAL.]
N. P. & ex Off. J. P., Bibb County.

STATE OF ALABAMA, }
Bibb County. }

OFFICE OF THE PROBATE COURT.

I hereby certify that the within conveyance was filed in this office for record on the 17th day of July, 1883, and duly recorded in Book Y of Deeds, page- 99–108, on 28th day of July, 1883.

JOHN S. GARDNER,
Judge of Probate, Bibb County, Alabama.

Exhibit No. 10.

Agreement. B. C. & I. Co. with W. D. Carter & K. Carter, Jr.

State of Alabama, }
Bibb County. }

This agreement, made and entered into this day between the Briarfield Coal and Iron Company, by its president, T. J. Peter, and William D. Carter and Kearsley Carter, Jr., witnesseth:

That whereas the said Briarfield Coal and Iron Company being indebted to the said William D. and Kearsley Carter, Jr., in the sum of thirteen thousand three hundred and thirty-three $\frac{33}{100}$ dollars, evidenced by its unnegotiable note dated June 9th, 1883, the balance of the purchase-money of certain lands sold to said company by said William D. and Kearsley Carter, Jr., which said sum is now due, with six per cent. interest from the date of said note: Now, in order to settle said indebtedness between said parties in ac-
1041 cordance with the terms of an agreement heretofore made by and between said parties, it is hereby agreed and stipulated as follows:

That certain mortgage given by said Brierfield Coal and Iron Company to said William D. and Kearsley Carter, Jr., to secure the aforesaid note, which mortgage is now of record in the office of the probate judge of Bibb county, State of Alabama, shall remain in full effect and unsatisfied until complete payment of said indebtedness shall be fully made by said company in the manner hereinafter agreed on, following:

From said indebtedness of thirteen thousand three and thirty-three $\frac{33}{100}$ dollars the sum of fourteen hundred dollars shall be deducted by said company and be retained by said company until the title to two hundred and eighty acres of the aforesaid lands, now claimed by the Alabama Mineral Land Company, shall be perfected and vested in said Brierfield Coal and Iron Company, upon the happening of which event the said company shall pay to said William D. & Kearsley Carter, Jr., or order, said fourteen hundred dollars, with interest from the 9th day of June, 1883; and it is agreed that from the sum remaining after said deduction of fourteen hundred dollars is made, with interest at six per cent. thereon from the 9th day of June, 1883, to the 9th day of June, 1887, making the amount of fourteen thousand seven hundred and ninety-seven $\frac{33}{100}$ —, the said Brierfield Coal and Iron Company shall deduct and retain the sum of one thousand dollars until said B.
1042 C. & I. Company shall be discharged finally from any liability arising to it from the suit of Frank Fitch now pending in the chancery court of Bibb county, State of Alabama, upon which discharge said sum of one thousand dollars, with legal interest from the 9th day of June, 1887, shall be paid by said B. C. & I. Company to William D. & Kearsley Carter, Jr., or their order. It is also agreed that the sum of two thousand dollars shall be deducted and retained by said B. C. & I. Company from said sum of fourteen thousand seven

hundred and ninety-seven $\frac{33}{100}$ dollars until the final discharge of said company as garnishee at the suit of H. C. Fancher now pending in the chancery court of Bibb county, State of Alabama. It is further agreed that upon the happening of that event the said B. C. & I. Company shall pay to William D. and Kearsley Carter, Jr., or their order, the said sum of two thousand dollars, with legal interest from the 9th day of June, 1887. It is also agreed that said B. C. & I. Company shall deduct and retain from said sum of fourteen thousand seven hundred and ninety-seven $\frac{33}{100}$ dollars the sum of nine hundred dollars until said B. C. & I. Company shall be finally discharged from a garnishment now pending at the suit of Spencer Brothers against it in the circuit court of Bibb county, State of Alabama, upon the happening of which event said B. C. & I. Company shall pay to said William D. and Kearsley Carter, Jr., or their order, the sum of nine hundred dollars, with legal interest from the 9th day of June, 1887.

1043 And now, to settle and pay said sum of fourteen thousand seven hundred and ninety-seven $\frac{33}{100}$ dollars after the foregoing sums have been deducted and retained as hereinbefore set forth, it is hereby agreed by and between the parties hereto that the said B. C. & I. Company make and deliver to said William D. and Kearsley Carter, Jr., said company's negotiable notes dated the 9th of June, 1887, which is done for the extinguishment of ten thousand eight hundred and ninety-seven $\frac{33}{100}$ dollars of said indebtedness of fourteen thousand eight hundred and ninety-seven $\frac{33}{100}$ dollars as aforesaid; whereupon it is understood that the said note of said B. C. & I. Company for thirteen thousand three hundred and thirty-three $\frac{33}{100}$ dollars is to be surrendered and delivered up to said company, said new notes being as follows:

One note for $1,000.00, payable October 20th, 1887, with 8% interest from date; one and thirty-three $\frac{33}{100}$ dollars is to be surrendered and delivered up to said company; said new notes being as follows:

One note for $1,000.00, payable October 20th, 1887, with 8% from date; one note for $1,500.00, payable November 20th, 1887, with 8% from date; one note for $1,500.00, payable December 20th, 1887, with 8% interest from date; one note for $1,500.00, payable January 20th, 1888, with 8% interest from date; one note for $1,500.00, payable February 20th, 1888, with 8% interest from date; one note for $1,000, payable March 20th, 1888, with 8% interest from date, and one note for $897.33, payable April 20th, 1888,

1044 with 8% interest from date, leaving a balance of two thousand dollars of said ten thousand eight hundred and ninety-seven $\frac{33}{100}$ dollars, which it is agreed by the said parties shall be satisfied and extinguished in the manner following, to wit:

Whereas the said T. J. Peter owns stock in the Brierfield Saw-Mill and Lumber Company, a corporation, to the amount of thirty-five hundred and fifty-six $\frac{16}{100}$ dollars, which the said T. J. Peter agrees to transfer to said William D. Carter at the price of seventy dollars per share, amounting to the price of twenty-four hundred and eighty-nine $\frac{31}{100}$ dollars; two thousand dollars of which it is agreed shall be applied as aforesaid, the remainder four hundred

and eighty-nine $\frac{31}{100}$ dollars to be paid by said William D. Carter to said T. J. Peter in money.

In testimoney whereof the said Brierfield Coal and Iron Company by its president, T. J. Peter, and said William D. Carter and Kearsley Carter, Jr., have hereunto set their hands and seals this the 12th day of July, A. D. 1887.

BRIERFIELD COAL & IRON COMPANY. [SEAL.]
By T. J. PETER, *Prest.* [SEAL.]
W. D. CARTER. [SEAL.]
K. CARTER, JR. [SEAL.]

Attest:
H. L. OLIVER,
E, T. PETER.

1045 EXHIBIT No. 11.

T. J. Peter, president. Jno. G. Murray, sec. and treas.

BRIERFIELD, ALA, 12 | 31, 1886.

M. Col. C. C. Huckabee and R. L. McCalley, Esq., to Brierfield Coal and Iron Co., Dr.

1883.				
Janu'y	19.	To money paid P. & D.	250	00
	22.	" " " Brooks	100	00
	31.	" Davis note	83	33
		" Bibb taxes, 1882	230	50
		" Shelby " 1882	34	10
Feb'y	16.	" cash	100	00
		" coal & nails	60	45
Nov.	1.	" money paid P. & D.	250	00
"	1.	" deposition fee "	100	00
Jan'y	1.	" Davis note	83	33
		" dep. fee, Cleveland, Galveston	10	00
		" dep. fee, Mallery	215	00
Nov.	20.	" car of coal	36	25
"	"	" fr't on "	28	30
1885.				
May	30.	" Pettus & Dawson	250	00
"	"	" McCalley, ag.	42	45
Oct.	—.	" fr't car of coal	36	01
		" car of coal	41	62
		" money paid Wilson & Wilson	10	00
Dec'r	31.	" Tom Brown, coal	40	38
"	"	" French Nabers' note	233	33
1883.				
April	14.	By L. M. Johnston		52 60

1885.				
Dece'r	31.	" balance		2,182 45
			2,235 05	2,235 05
"		" To balance	2,182 45	

EXHIBIT No. 12.

T. J. Peter, president. Jno. G. Murray, sec. and treas.

669. BRIERFIELD, ALA., 12 | 19*th*, 1886.

M. Col. C. C. Huckabee, to Brierfield Coal and Iron Co., Dr.

1046	To 77 % assessment on 38 shares of capital stock	2,926 00	
	Contra.		
	By amount paid, being 57		2,166 00
	By balance		760 00
		2,926 00	2,926 00
	To balance	760 00	

Ex. No. 13.

***

(1863–1880.)

R. M. Nelson, president. A. E. Baker, cashier.

The Commercial Bank of Selma.

(Capital, $300,000.00.)

SELMA, ALA., *October* 20*th*, 1888.

J. W. Dimmick, Esq., master.

MY DEAR SIR: T. J. Peter, Esq., has this day paid the indebtedness of the Brierfield Coal & Iron Company to this bank, which, with interest, amounts to $24,265$\frac{68}{100}$, as follows:

Principal of notes	22,500 00
Interest	1,765 68
	$24,265 68

Yours truly, R. M. NELSON, *Pt.*

Ex. No. 14.

3587.

(Here we rest.)

Jos. F. Johnston, president. Geo. H. Waddell, cash'r.
T. B. Lyons, vice-president. H. B. Urquart, ass't cash'r.

The Alabama National Bank.

(Paid-up capital, $500,000.00,)

BIRMINGHAM, ALA., *Oct.* 17, 1888.

J. W. Dimmick, Esq., master:

1047 T. J. Peter has this day paid the indebtedness of the Briarfield Coal & Iron Co. to this bank, which, with interest, amounts to $8,704.85 to this date, and as to which the bonds filed with you by this bank were held by us as collateral security—$9,000 bonds.

JOS. F. JOHNSTON, *Pres't.*

EXHIBIT No. 15.

T. J. Peter, president. Jno. G. Murray, sec. and treas.

BRIERFIELD, ALA., 12 | 31st, 1885.

M. Col. C. C. Huckabee and R. L. McCalley to Brierfield Coal and Iron Co., Dr.

1883.			
Jan'y 19.	To money paid P. & D.	250	00
22.	" " " Brooks	100	00
31.	" Davis note	83	33
	" Bibb taxes, 1882	230	50
	" Shelby " 1882	34	10
Febr'y 16.	" cash	100	00
	" coal & nails	60	45
Nov. 1.	" money paid P. & D.	250	00
" 1.	" deposition fee " "	100	00
1884.			
Jan'ry 1.	" Davis note	83	33
	" deposition fee to Cleveland, Galveston	10	00
	" dep. fee, Mallory	215	00
'84.			
Nov. 20.	" fr't on coal	28	30
" "	" car coal	36	25
1885.			
May 30.	" Pettus & Dawson	250	00
" "	" McCalley, ag.	42	45

Oct.	"	" one car's coal & fr't	77	63
		" money paid Wilson & Wilson for writing deeds	10	00
Dec'r	31.	To French Nabors' note	233	33
"	"	" Tom Brown, coal	40	38
1883.				
April	14.	By L. M. Johnston		52 60
			2,182	45

1048 EXHIBIT No. 16.

Paid cash, $250.

SELMA, *Jan'y* 19, 1883.

To the Briarfield Coal & Iron Co.:

Please pay to Pettus & Dawson twelve hundred and fifty dollars, being one-half of their fee in cases in chancery court of Bibb county against the said Briarfield Iron & Coal Company *et al.*, involving the title to the property sold to it by me—two hundred & fifty dollars of same now, two hundred & fifty due Jan'y, 1884, & balance at close of suits.

C. C. HUCKABEE.

St. James Hotel; J. M. Dedman, proprietor.

Home of commercial travelers.

SELMA, ALA., *Jan.* 22, 1883.

T. J. Peter, pres't Brierfield Coal & Iron Company:

You will please pay Judge Wm. Brooks the sum of one hundred dollars, and retain out of moneys which may be in your hands belonging to me.

C. C. HUCKABEE.

Paid "cash items."

C. C. Huckabee, for 83.33 paid Carleton on Davis note.

THE STATE OF ALABAMA, }
Bibb County. }

I, C. C. Collier, tax collector of county aforesaid, hereby certify that tax receipt No. 11 of stub tax book No. 8 is, in the following-described property, assessed to Brierfield Coal & Iron Company for the year 1882, to wit:

	Section.	Township.	Range.
E. ¼ of s w ¼ & n w ¼ of s w ¼	3	24	11
S w ¼ of	5	24	11

Valuation, $300.00; tax, $3.45.

Also that tax receipt No. 185 of the same book, same year,
1049 and assessed to the same company, is on the following property, to wit:

	Section.	Township.	Range.
S e ¼ of s e ¼ of s w ¼	24	24	11
N e ¼	25	24	11
N ½ of n w ¼ and s e ¼ of n w ¼	30	24	12
W ½ of n w ¼ of n e ¼	30	24	12
S w ¼ of s w ¼ and part s e ¼ of s w ¼	19	24	12
S w ¼ of s e ¼	19	24	12

Valuation, $20,000.00; tax, $230.00; fee, .50.
This February 17th, 1883.

C. C. COLLIER,
Tax Collector.

Rec'd of C. C. Huckabee thirty-three $\frac{60}{100}$ dollars, his State and county tax for the year 1882, this 19 day of March, 1883.

C. W. O'HARA, *T. C.*,
Per P. D. MERONEY.

Rec'd fifty cents cash.

P. D. MERONEY.

Montevallo, Ala.

T. J. Peter, president; A. A. Southwick, vice-pres't & treas.; Jno. G. Murray, sec't'y & auditor.

Brierfield Coal and Iron Co.

BRIERFIELD, ALA., *Feb'y 16th*, 1883.

Received from John G. Murray the sum of one hundred dollars, to be held against me as cash item, less amount due on note of L. M. Johnston, given Murray.

C. C. HUCKABEE.

BRIERFIELD, ALA., *Nov. 1st*, '83.

C. C. Huckabee Dr. to rents, $350.00; $100 cash paid P. & D. for deposition expense, and ½ $500 note given, payable Jan'y 1st, '84, for fees, all in Collins' case in chancery court.

JOHN G. MURRAY.

See voucher # 1110.

East. Tenn., Virginia & Georgia railroad W. B. 118. Car 3387.

1050 11, 20, 188–.

B. C. & I. Co. to the East Tenn., Virginia & Georgia R. R. for transportation from Brierfield to Marion, Dr.

P. P. on car coal for C. C. Huckabee 28 30

Received payment,

W. C. McKNIGHT, *Agent.*

9.40. # 312.

$250.00. MARION, *May* 20, 1885.

On the first day of October next pay to the order of E. W. Pettus

one hundred and fifty dollars, at the City National Bank of Selma, & charge the same to—

C. C. HUCKABEE.

To Thos. J. Peter, pres't Brierfield Coal & Iron Company. # 310.

[Written across the face:] Accepted. Brierfield Coal & Iron Company. T. J. Peter, pres't. Oct. 4.
[Written across the face in red ink:] B. D. No. 723.

Endorsed on back: E. W. Pettus. City National Bank, Selma., Ala. Paid Oct. 3, 1885.

T. J. Peter, president; Jno. G. Murray, secretary and treasurer.

BRIERFIELD, ALA., 5, 1st, 1885.

M-. R. L. McCalley, Eq., to Brierfield Coal and Iron Co., Dr.

1883.					
Oct.	8.	For 17 lb O. iron, @ 3c.		51	Charged to C. C. Huckabee & R. L. McCalley, stock ac. April 30th, 1884.
	19.	30 lb ¾ O. " "		90	
		68 lb 2 + ½ O. iron, @ 3c.		2 04	
		15 lb nail plate " "		45	
		7 lb 1½ nail O. " "		21	
		350 lb ¾ + 3 " " "		10 50	
		28 lb ¾ O. iron "		84	
Nov.	3.	1440 lb coal.			
	14.	5,540 lb "			
	24.	1,640 lb "			
Dec'r	31.	2,050 lb " for mo.			
1884.					
Jan'y	11.	9,650 lb " "			
1051					
Feb'y	29.	3,300 lb coal for mo.			
Mar.	31.	3,400 lb " "			
Apr.	30.	2,300 lb " "			
		29,320 lb, @ 15c. per cent.	43 98		
Feb'y	29.	By 1 day survey		5 00	
"	"	" 3,350 lb corn		33 50	
"	"	By balance		20 93	
			59 43	59 43	
		To balance	20 93		

Nov. —. 1,000 lb
1,190 "
Dec. —. 1,000 "
" 2,000 "

1885.
Feb. —. 1,800 "
" 1,500
" 2,300
M'ch —. 1,560
" 2,000

14,350, or 7.17½, @ 3.00 ..... 21 52½ 42 45

T. J. Peter, president; John G. Murray, secretary and treasurer.

Brierfield Coal and Iron Company, manufacturers of the Brierfield nails from a mixture of the best coke and cold-blast charcoal irons, producers of coke, domestic and steam coals.

BRIERFIELD, ALA., 12, 18th, 1885.

Brierfield Coal & Iron Co., Brierfield, Ala.

DEAR SIRS: Please charge on account of my stock & bonds in your possession the sum of two hundred thirty-three & $\frac{33}{100}$ dollars to cover French Nabors' note, dated Nov'r 28th, 1883, for $200.00, and interest; also charge $40.38, covering car coal shipped Thomas Brown at Marion.

C. C. HUCKABEE.

1052 BRIERFIELD, ALA., *April 14th*, 1883.

Mr. C. C. Huckabee to L. M. Johnston, Dr.

Order Capt. Alvis	40 00
Verbal order Capt. Alvis	17 40
Order given for negro church, lumber	5 00
	$62 40
Cr. by note	115 00
Cr. balance	52 60

T. J. Peter, president; Jno. G. Murray, secretary and treasurer.

BRIERFIELD, ALA., *Jan. 1st*, 1885.

M-. C. C. Huckabee, Marion, Ala., to Brierfield Coal and Iron Co., Dr.

1884.
Nov. —. 14.5 tons coal, @ 2.50 ..... 36 25
Fr't on same 28 30

64 55

T. J. Peter, president; Jno. G. Murray, sec. and treas,

BRIERFIELD, ALA., —— —, 188–.

M-. C. C. Huckabee & McCalley to Brierfield Coal and Iron Co., Dr.

Oct. 14. 1 car coal—

Car.	Tons.		
2771	18.5, @ 2.25		41 62
Fr't prepaid			36 01
			77 63

EXHIBIT No. 17

NEWBERN OIL MILL, *Dec. 17th*, 1886.

Mr. Murry.

MY DEAR SIR: I intended to be in Brierfield the coming week and have so written, but I find my business will require me 1053 here until the week after Christmas, & consequently can't be in Brierfield before that time. Will you inclose me one thousand dollars of my certificate of stock in the Brierfield Co. by mail & direct it to Marion, & whatever receipting is necessary in the matter I will certainly do when I come up? I want a thousand dollars of it for my wife, & if you can do this for me it will be quite an accommodation & appreciated by your friend,

C. C. HUCKABEE.

EXHIBIT No. 18.

3587.

Jos. F. Johnston, president. Geo. H. Waddell, cash'r.
T. B. Lyons, vice-president. H. B. Urquhart, ass't cash'r.

The Alabama National Bank.

Paid-up capital, $500,000.00.

BIRMINGHAM, ALA., *Oct'r 20th*, 1888.

J. W. Dimmick, Esq., special master, &c.:

Please deliver to Mr. T. J. Peter the pas*sed*-due coupons attached to the bonds filed by us in the Briarfield case.

Yours rest., JOS. F. JOHNSTON, *Pres't.*

EXHIBITS 19 & 20.

United States Circuit Court, Middle District of Alabama—J. W. Dimmick, Clerk.

CLERK'S OFFICE,
MONTGOMERY, ALA., *August 21st*, 1889.

W. L. CHAMBERS, Trustee,
vs.
THE BRIARFIELD COAL — IRON & Co. } In Equity.

Received of J. W. Dimmick, special master, the notes filed
1054 by the Commercial Bank of Selma, Exhibit No. 19, being notes for the sum of $22,500, issued by the defendant.

Also the notes of Ala. Nat. Bank of Birmingham, Ala., Exhibit No. 20, for $8,000, transferred by said banks to me after they had been filed.

T. J. PETER.

SELMA, *Aug.* 21, 1889.

Mr. J. W. Dimmick, clerk U. S. courts.

DEAR SIR: Mr. Thos. J. Peter has arrange- with the City National Bank of Selma, & has a right to withdraw the notes which I gave in evidence for said bank—not the bonds, but the notes.

Yours truly, E. W. PETTUS.

EXHIBIT No. 21.

Receipt of J. T. Fitzgerald to T. J. Peter.

Law office of Pettus & Pettus, Selma, Ala.

Edm'd W. Pettus. Francis L. Pettus.

SELMA, ALA., *Dec.* 15, 1888.

I have received payment in full from Thomas J. Peter of the note of the Brierfield Coal & Iron Company for six thousand dollars, dated Sept. 15, 1886, & due Sept. 15, 1887, with interest from date, on which said Thomas J. Peter was surety, and for the payment of which I held seven first-mortgage bonds of the Brierfield Coal & Iron Company belonging to said Peter as collateral.

1055 Said Peter paid said note by giving me his individual notes for the six thousand dollars & by paying the interest up to the 15th day of November, 1888, in money.

J. T. FITZGERALD.

1056 EXHIBIT 1 TO TESTIMONY K. CARTER, JR.

STATE OF ALABAMA,
Bibb County.

This indenture, made this the ninth day of June, A. D. 1883, between the Brierfield Coal and Iron Company, a body corporate duly incorporated under the laws of Alabama, having its principal office at Brierfield, in said county and State, party of the first part, and William D. Carter and Kearsley Carter, Jr., parties of the second part.

Whereas the party of the first part has purchased from the Bibb Furnace Company and the parties of the second part certain personal property and the real estate hereafter described for the sum of ninety thousand dollars, and has paid on said purchase twenty-five thousand dollars and still owes thereon sixty-five thousand dollars; and whereas the party of the first part desires to secure the payment of said last-mentioned sum of sixty-five thousand dollars, which is evidenced by its five promis-ory notes, all bearing even date with these presents, as follows: two for twelve thousand five hundred dollars each, payable at nine and fifteen months after date respectively, and three for thirteen thousand three hundred and thirty-three and thirty-three hundredths dollars, each payable at two, three, and four years after date respectively, all of said notes bearing interest at six per cent. per annum from date:

Now, therefore, this indenture witnesseth: That the said party of the first part, in consideration of the premises and in further consideration of the sum of one hundred dollars to it in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents doth grant, bargain, sell, mortgage, and convey, unto the parties of
1057 the second part the following-described real estate, all situated and lying in the said county and State and being the same purchased by the party of the first part from said Bibb Furnace Company and the parties of the second part, and which are described as follows, to wit: The southeast quarter and the northeast quarter of the southwest quarter and the southeast quarter of the northwest quarter and the south half of the northeast quarter of section twenty-eight, all of sections twenty-six and twenty-seven, and the land lying south of the tram-road from the Brierfield Mills to Bibb Furnace, in the southeast quarter of section twenty-three; the south half of section twenty-five; all of section thirty-three; all of section thirty-four except the northeast quarter of the southeast quarter thereof; the northwest quarter of section thirty-five except the southeast quarter thereof; the west half of the northeast quarter and the land that lies north of the grade of the Ashby and Bibb Furnace railroad, in the northeast quarter of section thirty-five, and the southwest quarter of the southwest quarter of section thirty-five; all of the west of the northwest quarter of section thirty-six that lies north of the grade of the Ashby and Bibb Furnace railroad, and the west

half of the southeast quarter of said section thirty-six, all of the above-described lands being in township twenty-four north and range eleven east; also the south half of the north half and the northeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of section five; also the northeast quarter of section four; als- all of section three except the southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of said section; also all of section two except the
1058 southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter and the northeast quarter of the northeast quarter of said section; also the northeast quarter and the east half of the southeast quarter of section ten; also all of section eleven except the southeast quarter of the southwest quarter and the south half of the southeast quarter of said section; also the northwest quarter of the southwest quarter of section twelve, all in township twenty-three north and range eleven east; also the following lands purchased by C. C. Huckabee from A. J. Day by deed bearing date October 16th, 1880, to wit:

All of section one except the south half of the southwest quarter township twenty-three north, rang- eleven east; also the south half of the northeast quarter and the northeast quarter of the southeast quarter of section thirty-one; also the south half of the northwest quarter and the northwest quarter of the northeast quarter and the south half of the southwest quarter and the west half of the southeast quarter of section thirty-two, township twenty-four north, range twelve east; also the northwest quarter of the northwest quarter of section five, township twenty-three north, range twelve east, containing in the aggregate six thousand eight hundred eighty acres, more or less, and being the same lands conveyed by C. C. Huckabee to W. D. Carter and A. K. Sheppard, Jr., by deed bearing date January 10th, 1881, except eighty acres in section-two and three, above reserved; also the iron ore on the following-described lands, conveyed by deed of J. N. Smith and C. C. Huckabee to W. D. Carter and A. K. Sheppard, Jr., bearing date January 7th, 1881, and more particularly described as follows, to wit: All of section twenty-two
1059 and all the lands owned by said Smith in section twenty-one, and the north half of section twenty-eight and the west half of the south half of the northwest quarter of section twenty-eight and the west half of the southwest quarter of section twenty-eight and the south half of the southwest quarter of section twenty-three, all in township twenty-four north, range eleven east, containing in the aggregate sixteen hundred and forty acres, more or less; also the east half of the southwest quarter and the northwest quarter of the southwest quarter and the west half of the southeast quarter of section four, township twenty-three north, range eleven east; also the east half of the southwest quarter and the west half of the southeast quarter of section thirty, township twenty-four north, range twelve east; together with all and singular the buildings and improvements on said lands:

To have and to hold the same, with all — singular the tenements,

hereditaments, and appurtenances thereto belonging, unto the parties of the second part, their heirs and assigns forever.

But it is expressly understood that only the timber right in the two hundred and forty acres of land in section five, township twenty-three north, and range eleven east, is hereby conveyed. But this indenture is made upon the following terms and conditions—that is to say: If said five promis-ory notes hereinabove described shall be paid at or before maturity, at the election of the party of the first part, with all accrued interest thereon to the time of payment, then this conveyance shall become void and of no effect and shall be cancelled and discharged; but if said debt shall not be paid when the last of said notes becomes due and payable, then the parties of the second part are hereby authorized to enter upon and take possession of all of said real estate, and, after giving notice by
1060 advertisement of the time and place of sale for sixty days previous to the date of sale in one newspaper published in Bibb county and one published in Dallas county, may proceed to sell all of the real estate herein described, at Brierfield, in Bibb county, for cash, to the highest bidder, and with the proceeds of sale shall pay whatever balance may be due upon said notes, with interest thereon, and, after paying the same and the expenses of said sale, shall pay the surplus to the said party of the first part or its successors or legal representatives.

In testimony whereof the party of the first part has hereunto set its name and seal by its president, Thomas J. Peter, and its secretary, John G. Murray, the day and year first above written.

BRIERFIELD COAL & IRON COMPANY, [SEAL.]
By T. J. PETER. [SEAL.]

Attest: JOHN G. MURRAY.

Witnesses:
A. A. WILEY.
JOHN G. MURRAY.

THE STATE OF ALABAMA, }
Bibb County. }

I hereby certify that T. J. Peter, president of the Brierfield Coal and Iron Company, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same by signing the name of the Brierfield Coal & Iron Company by T. J. Peter, pres't, voluntarily on the day the same bears date.

Given under my hand & seal this the 9th day of June, A. D. 1883.

GEO. B. HEAN,
N. P. & ex Off. J. P., Bibb Co.

EXHIBIT 2.

For in consideration of the sum of thirty-five hundred dollars to me this day in hand paid, the rec't whereof is hereby ac-
1061 knowledged, I have this day & do hereby transfer, assign, set over, & sell to Lillian A. Carter all my right, title, interest, & demand in & to the foregoing mortgage & the notes for which the same was given to secure, & for said consideration I do further grant, bargain, sell, & convey to said Lillian A. Carter the property & lands mentioned in said mortgage, hereby concurring in her act in making said purchase & assenting to the same.

March the 16th, 1888.

K. CARTER, JR.

Attest: G. H. CRAIG.

STATE OF ALABAMA, }
Bibb County. }

OFFICE OF THE PROBATE COURT.

I hereby certify that the within conveyance was filed in this office for record on the 18th day of July, 1883, and duly recorded in Book T of Deeds, page- 84 to 87, on 18th day of July, 1883.

JOHN S. GARDNER,
Judge of Probate, Bibb County, Alabama.

EXHIBIT 3.

STATE OF ALABAMA, }
Bibb County. }

Know all men by these presents that whereas I am indebted to Kearsley Carter, Jr., in the sum of five thousand dollars, money advanced and loaned to me by said Kearsley Carter, Jr., at various times heretofore, & whereas I desire to pay said money to said Kearsley Carter, Jr., or secure the same to be paid to him, & whereas, I am the owner of an undivided half interest in a certain mortgage given by the Brierfield Coal & Iron Company of said county and State to W. D. & K. Carter, Jr., & the note thereby secured on the 9th day of June, 1883, to secure the purchase-money of the property in said mortgage described, and whereas I am willing to sell, assign, & transfer to said Kearsley Carter, Jr., my said interest in said mortgage & notes, & to convey to him the same in
1062 settlement & payment in full of my said indebtedness, & whereas Kearsley Carter, Jr., has accepted said offer & agreed to take said transfer, conveyance, & sale in full without & does so receive & accept it: Now, therefore, in consideration of the premises & of said Kearsley Carter, Jr.'s, release of said claim of indebtedness & receipt in full of said indebtedness this day received by me from him, & of the further consideration of seventy-five dollars to me in hand paid this day by said Kearsley Carter, Jr., the receipt whereof

is hereby acknowledged, I have this day and do hereby transfer, set over, & assign & sell to said Kearsley Carter, Jr., all my right, title, interest, & claim in & to the said mortgage & the notes thereby received & the property therein mentioned, & for said consideration grant, bargain, sell, & convey to said Kearsley Carter, Jr., all my right, title, interest, & claim in and to the lands & other property of every description set out & presented in said mortgage.

Witness my hand and seal this 7th day of March, 1887.

W. D. CARTER. [SEAL.]

Attest: C. ROYSTER POWER.
M. J. N. KEETH.

EXHIBIT 4.

BRIERFIELD, ALA., *July 28th*, 1887.

To T. J. Peter, Esqr., pres't B. C. & I. Co., Brierfield, Ala.

DEAR SIR: I have sold and for value received transferred my interest in the money due W. D. & K. Carter, Jr., and left in your hands until such time as garnishments & title matters shall be cleared up, to K. Carter, Jr., and you will please pay same to him when due.

W. D. CARTER.

Attest: GUY FITZGERALD.
W. P. LASSITER.

1063 No. 103.

The Whole of Minute Book No. 1.

In the Probate Court of said County.

THE STATE OF ALABAMA, }
Bibb County. }

To the honorable the judge of probate of said county:

1. Your petitioners, Caswell C. Huckabee, who resides in the county and State aforesaid; Thomas J. Peter, who resides in St. Louis, in the State of Missouri, and Robert L. McCalley, who resides in Bibb county, in the State of Alabama, hereby declare their desire to form themselves into a private corporation.

2. The name of the proposed corporation is "Brierfield Coal and Iron Company," and its principal place of business is to be at Brierfield, in Bibb county, in said State of Alabama. The general purpose of said corporation is to purchase and own lands to be used for mining coal and iron ore and the manufacturing of iron, and the nature of the business which it proposes to do is to mine and manufacture, buy and sell, coal and iron in all of its branches.

3. The capital stock of said "Brierfield Coal and Iron Company" is to be seven hundred and fifty thousand dollars, to be divided into seven thousand and five hundred shares, and each share to be one hundred dollars at par value.

4. And your petitioners pray that a commission may be issued by your honor constituting them a board of corporators and giving them authority to open books of subscription to the capital stock of said proposed corporation, and requiring them to give such notice as your honor may deem fit of the times and places of the opening of the books of subscription, according to the statute in such case made and provided.

C. C. HUCKABEE.
THOMAS J. PETER.
ROBERT L. McCALLEY.

1064 In the Probate Court of Bibb County. April Term, 1882.

In the matter of the declaration of Caswell C. Huckabee, Thomas J. Peter, and Robert L. McCalley, proposing to form a corporation by the name of "Brierfield Coal and Iron Company."

This day came the said Caswell C. Huckabee, Thomas J. Peter, and Robert L. McCalley, and filed in this court their written declaration subscribed by them in the words and figures following:

In the Probate Court of said County.

THE STATE OF ALABAMA, }
Bibb County. }

To the honorable the judge of the probate — of said county:

1. Your petitioners, Caswell C. Huckabee, who resides in the county and State aforesaid; Thomas J. Peter, who resides in St. Louis, in the State of Missouri, and Robert L. McCalley, who resides in Bibb county, in the State of Alabama, hereby declare their desire to form themselves into a private corporation.

2. The name of the proposed corporation is "Brierfield Coal and Iron Company," and its principal place of business is to be at Brierfield, in Bibb county, in said State of Alabama. The general purpose of said corporation is to purchase and own lands to be used for mining coal and iron ore and the manufacturing of iron, and the nature of the business which it proposes to do is to mine and manufacture, buy and sell, coal and iron in all their branches.

3. The capital stock of said "Brierfield Coal and Iron Company" is to be seven hundred and fifty thousand dollars, to be divided into seven thousand and five hundred shares, and each share to be one hundred dollars at par value.

4. And your petitioners pray that a commission may be issued by your honor constituting them a board of corporators, and giving them authority to open books of subscription to the capital stock of
1065 said proposed corporation, and requiring them to give such notice as your honor may deem fit of the times and places of the opening of the books of subscription, according to the statute in such case made and provided.

C. C. HUCKABEE.
THOMAS J. PETER.
ROBERT L. McCALLEY.

It is therefore ordered that a commission be issued by the judge of probate as prayed for in said declaration.

JNO. S. GARDNER,
Judge of Probate.

Commission.

THE STATE OF ALABAMA, }
Bibb County. }

In the Probate Court of said County.

To Caswell C. Huckabee, Thomas J. Peter, and Robert T. McCalley, Greeting:

Whereas a declaration in writing subscribed by you was this day filed in said court in the words following:

THE STATE OF ALABAMA, }
Bibb County. }

In the Probate Court of said County.

To the honorable the judge of probate of said county:

1. Your petitioners, Caswell C. Huckabee, who resides in the county and State aforesaid; Thomas J. Peter, who resides in St. Louis, in the State of Missouri, and Robert L. McCalley, who resides in Bibb county, in said State of Alabama, hereby declare their desire to form themselves into a private corporation.

2. The name of the proposed corporation is "Brierfield Coal and Iron Company," and its principal place of business is to be at Brierfield, in Bibb county, in said State of Alabama.

The general purpose of said corporation is to purchase and
1066 own lands to be used for mining coal and iron ore and the manufacturing of iron, and the nature of the business which it proposes to do is to mine and manufacture, buy and sell coal and iron in all of its branches.

8. The capital stock of said "Brierfield Coal and Iron Company" is to be seven hundred and fifty thousand dollars *dollars*, to be divided into seven thousand and five hundred shares, and each share to be one hundred dollars par value.

4. And your petitioners pray that a commission may be issued by your honor to your petitioners constituting them a board of corporators and giving them authority to open books of subscription to the capital stock of said proposed corporation, and requiring them to give such notice as your honor may deem fit of the times and places of the opening of the books of subscription, according to the statute in such case made and provided.

C. C. HUCKABEE.
THOMAS J. PETER.
ROBERT L. McCALLEY.

Now, according to the statute in such case provided, you are hereby appointed and commissioned and constituted a "board

of corporators," and are fully authorized to open books of subscription to the capital stock of "Brierfield Coal and Iron Company," the proposed corporation, and you are required to give one week's notice of the times and places of the opening of books of subscription by publication in a newspaper published in Bibb county called the "Bibb Blade" and by written notice posted at the court-house door in the town of Centerville, in said county.

Given under my hand at my office, in Centerville, in said county, this 27 day of April, 1877.

JNO. S. GARDNER,
Judge of Probate of Bibb County.

1067 THE STATE OF ALABAMA,
County of Bibb.

I, Jno. S. Gardner, judge of the probate court in and for said county, hereby certify that I am the custodian of the files and records in said court, and that the foregoing contains a full, complete, and true record of the files and records of my court in the matter of the petition of C. C. Huckabee, Thomas J. Peter, and Robert L. McCally filed by them on this day in my office praying to incorporate under the name of the "Brierfield Coal and Iron Company."

Given under my hand at my office, in Centerville, in said county, on the 27th day of April, 1882.

JNO. S. GARDNER,
Judge of Probate of Bibb County.

Notice.

Notice is hereby given that a commission constituting the undersigned parties a board of corporators, under the name of the "Brierfield Coal and Iron Company," was issued by John S. Gardner, as judge of probate of Bibb county, Alabama, giving them authority to open books of subscription to the capital stock of the proposed company, and requiring them to give one week's notice by publication in the newspaper called the Bibb Blade, published in said county, and by posting one written notice at the court-house door in said county of the time and place of opening books of subscription. Notice is therefore hereby given that said books will be opened at Brierfield, in said county, on 4th day of May, 1882.

C. C. HUCKABEE.
THOMAS J. PETER.
ROB'T L. McCALLEY.

THE STATE OF ALABAMA,
Bibb County.

1068 I, J. Madison Langston, one of the proprietors of the Bibb Blade, hereby certify that the above notice was published in the said Bibb Blade one week, in accordance with the requirements of the order made by John S. Gardner, judge of probate of said county, and referred to in said notice.

Witness my hand this the 4th day of May, 1882.

J. M. LANGSTON,
Proprietor of Bibb Blade.

In accordance with the order of John S. Gardner, Esq., judge of probate of Bibb county, in the State of Alabama, to the undersigned as a "board of corporators" of the "Brierfield Coal and Iron Company," the undersigned gave the notice of the times and places of opening the books of subscription to the capital stock of said company, and on May 4th, 1882, at the village of Brierfield, open- books of subscription to the capital stock of said company as follows, and received the following *bona fide* subscription-:

The undersigned respectively subscribe the amounts set opposite their names to the capital stock of the "Brierfield Coal and Iron Company" on the terms to be furnished by directors:

T. J. Peter	One hundred and twenty thousand dollars.
E. A. Peter	Fifty thousand dollars.
C. S. Plumb	Fifty thousand dollars.
Plumb & Hood	Fifty thousand dollars.
Samuel Thomas and associates	Twenty-five thousand dollars.
Justin S. Morrill	Ten thousand dollars.
C. C. Huckabee	Fifteen thousand dollars.
R. L. McCalley	Five thousand dollars.

THE STATE OF ALABAMA, }
County of Bibb. }

1069 To the honorable the probate judge of said county:

We, the undersigned, the board of corporators of the Brierfield Coal and Iron Company, respectfully certify to your honor that the organization of said company has been completed as is provided for by the section 1806 of the Code of 1876 of the State of Alabama.

And that there has been paid to the president of said company in cash at least twenty per cent. of the capital subscribed, and that not less than fifty per cent. of the seven hundred and fifty thousand dollars, the proposed capital stock of said company, has been subscribed by *bona fide* subscribers.

And that after due and legal notice had been given, as was required by the order of your honor, as evidenced by the certificate hereto attached, marked "Exhibit A," and made a part of this our certificate, the books of subscription of said company were opened at Brierfield, on the 4th day of May, 1882.

All of which is respectfully certified and submitted to your honor, as is by the statute in such case provided.

Witness our hands and — this 4th day of May, 1882.

C. C. HUCKABEE.
T. J. PETER.
R. L. McCALLEY.

THE STATE OF ALABAMA, }
County of Bibb. }

In the matter of the petition of C. C. Huckabee, T. J. Peter, and R. L. McCalley, filed in the probate court of said county on the 27th day of April, 1882, declaring their desire to form themselves into a private corporation for the purposes stated in said petition and to be known as the Brierfield Coal and Iron Company.

1070 The statute laws of the State of Alabama and all my orders, as the judge of probate of said county in said matter, having been fully complied with by said board of corporators—

I, John S. Gardner, as probate judge of said county, do therefore hereby certify to said company that they have been fully organized according to the laws of Alabama under the name of the Brierfield Coal and Iron Company and for all the purposes indicated in their said written declaration now on file and recorded in this court, and that they are fully authorized to commence business under their charter.

Given under my hand and seal of my office this the — day of May, 1882.

——— ———,

Judge of Probate of Bibb County, Ala.

THE STATE OF ALABAMA, }
County of Bibb. }

In the Probate Court of said County.

In the matter of the petition of C. C. Huckabee, Thomas J. Peter, and Robert L. McCalley, filed in the probate court of said county on the 27 day of April, 1882, declaring their desire to form themselves into a private corporation for the purposes stated in said petition.

This day came the said C. C. Huckabee, Thomas J. Peter, and Robert L. McCalley, the board of corporators of said private corporation to be known as the Brierfield Coal and Iron Company, and certify and present to the probate judge of said county, in writing, and over their signatures, the following certificate of their organization as the Brierfield Coal and Iron Company:

THE STATE OF ALABAMA, }
County of Bibb. }

To the honorable the judge of probate of said county:

1071 We, the undersigned board of corporators of the Brierfield Coal and Iron Company, respectfully certify to your honor that the organization of the said Brierfield Coal and Iron Company has been completed as is provided for by section 1806 of the Code of 1876 of the State of Alabama.

And there has been paid to the president of said company in cash at least twenty per cent. of the capital subscribed, and that not less

than fifty per cent. of the seven hundred and fifty thousand dollars, the proposed capital stock of said company, has been subscribed by *bona fide* subscribers.

And that after due and legal notice has been given as was required by the order of your honor, as evidenced by the certificate hereto attached, marked "Exhibit A," and made a part of this our certificate, the books of subscription to said company were opened at Brierfield on the 4th day of May, 1882.

All of which is respectfully certified and submitted to your honor as is by the statute in such matters provided.

Witness our hands this 4th day of May, 1882.

(Signed) C. C. HUCKABEE.
R. L. McCALLEY.
T. J. PETER.

"EXHIBIT A."

Notice.

Notice is hereby given that a commission constituting the undersigned parties a board of corporators under the name of the "Brierfield Coal and Iron Company" was issued by John S. Gardner, as judge of probate of Bibb county, Alabama, giving them authority to open books of subscription to the capital stock of the proposed company, and requiring them to give one week's notice by publication in the newspaper called the Bibb Blade, published in said county, and by posting one written notice at the court-house door in said county, of the time and place of the opening of books of subscription. Notice is therefore hereby given that said books will be opened at Brierfield in said county on the 4th day of May, 1882.

C. C. HUCKABEE.
THOMAS J. PETER.
R. L. McCALLEY.

1072 THE STATE OF ALABAMA, }
County of Bibb. }

I, J. Madison Langston, one of the proprietors of the Bibb Blade, hereby certify that the above notice was published in the said Bibb Blade one week, in accordance with the requirements of the order made by John S. Gardner, judge of probate of said county, and referred to in said notice.

Witness my hand this the 4th day of May, 1882.

J. M. LANGSTON,
Proprietor of Bibb Blade.

It is therefore ordered by me, John S. Gardner, probate judge of said county, that such certificate and exhibit be received, filed, and spread upon the records of this court, and that the said C. C. Huckabee, Thomas J. Peter, and Robert L. McCalley be, & hereby are, organized under the laws of Alabama into a private corporation, to be known as the Brierfield Coal & Iron Company, and that a certifi-

cate be issued to them as said company by me, as the probate judge of said county, certifying that they have been fully organized according to the laws of Alabama, as a private corporation, under the name and for the purposes indicated in their written declaration, and that they *they* are fully authorized under their charter to commence business.

This the 5th day of May, 1882.

JNO. S. GARDNER,
Judge of Probate, Bibb Co., Ala.

MAY 4TH, 1882.

At a meeting of the corporators held at Brierfield, at the residence of Robert L. McCalley, fifty per cent. of the capital stock having been subscribed, the subscribers were called together by the corporators, and a majority in value being present personally and by proxy, they proceeded to elect directors.

C. C. HUCKABEE.
THOMAS J. PETER.
ROB'T L. McCALLEY.

1073 The stockholders of the Brierfield Coal and Iron Company having met by the order of the corporators at the residence of R. L. McCalley in Brierfield, organized by the election of C. C. Huckabee as chairman and R. L. McCalley as secretary.

On motion of T. J. Peter, the number of directors be fixed at five for this company.

On motion of T. J. Peter, it is moved that the stockholders now proceed to elect five directors to serve the ensuing year, and the following gentlemen, having each received the vote of twenty-nine hundred shares, were declared elected for the ensuing year, namely, Caswell C. Huckabee, Amos R. Southwich, Robert L. McCalley, John G. Murray, and Thomas J. Peter.

On motion of T. J. Peter, the following resolution was adopted:

Resolved, That the directors be required to receive subscriptions to the capital stock of the Brierfield Coal and Iron Company as follows: For the purpose of raising the sum of four hundred and fifty thousand dollars with which to purchase certain coal and iron properties, to open and operate coal and iron-ore mines, to repair rolling mills, to erect coke ovens and blast furnace, to produce coal and manufacture coke and iron, to build about five miles of R. R. tracks to connect the coal mines, coke ovens, and iron-ore banks with the blast furnace and rolling mill, it is ordered that the directors be authorized to receive subscriptions to the capital stock of said company, and for each nine hundred dollars paid to said company to deliver to the subscriber one thousand dollars in a six per cent. mortgage thirty-year bond, to be made on the property of said company, and a like sum of one thousand dollars of the capital stock of said company.

The following motion was offered by R. L. McCalley and was adopted:

Resolved, That the stockholders' meeting adjourn, to be
1074 called together at the call of the president of the company, until regular by-laws are adopted by the stockholders.

R. L. McCALLEY, *Sec't'y.*
C. C. HUCKABEE, *Chairman.*

The directors of the Brierfield Coal and Iron Company met at the residence of R. L. McCally at Brierfield on the evening of May the fourth, 1882, and proceeded to the election of officers, and T. J. Peter moved that C. C. Huckabee act as chairman of this meeting, and that R. L. McCalley act as secretary of this meeting. The directors present at this meeting were Messrs. C. C. Huckabee, T. J. Peter and R. L. McCalley.

It was moved and seconded that T. J. Peter be elected to serve as president of this company for the ensuing year, and said motion was carried.

It was moved and seconded that Amos A. Southwich be elected vice-president of this company for the ensuing year, and said motion was carried.

It was moved and seconded that John G. Murray be elected secretary and auditor of this company at a salary of one hundred dollars per month, salary to commence at the commencement of service. Motion carried.

It was moved and seconded that the president be authorized to receive subscriptions to the capital stock of the company upon the terms and conditions directed by the stockholders at their meeting heretofore.

It was moved and seconded that this meeting adjourn, subject to the call of the President; said motion carried.

R. L. McCALLEY, *Sec't'y.*
C. C. HUCKABEE, *Chairman.*

In accordance with the resolution adopted by the stockholders of the Brierfield Coal and Iron Company held at Brierfield on May 4th, 1882, and the directions of the directors, held at the same place
on the evening of the same day, I, T. J. Peter, president of
1075 said company, do now receive subscriptions to the capital stock of said company upon the following terms, as required so to do both by the stockholders and directors.

For the purpose of raising the sum of four hundred and fifty thousand dollars with which to purchase certain coal and iron properties, to open and operate coal and iron-ore mines, to repair rolling mill, to erect coke ovens and blast furnace, to produce coal and manufacture coke and iron, to build about five miles of railroad tracks to connect the coal mines, coke ovens, and iron-ore tanks with the blast furnace and rolling mill: Now, therefore, the undersigned agree to pay to said company the amounts respectively set opposite our names, in such sums and at such times as the directors of said company may require, and to receive from said company for each nine hundred dollars paid in the sum of one thousand dollars in a

six per cent. mortgage bond of said company, and nine hundred dollars in the capital stock of said company.

Not more than — per centum of each subscription to be called for during one month.

T. J. Peter and associates, one hundred & twenty thousand dollars.

E. A. Peter, fifty thousand dollars.

R. L. McCalley, five thousand dollars.

C. C. Huckabee, fifteen thousand dollars.

G. I. Seney and associates, seventy-five thousand dollars.

L. S. Plumb, fifty thousand dollars.

Plumb & Hood, fifty thousand dollars.

Justin S. Morrill, ten thousand dollars.

Office of Brierfield C. & I. Co.

BRIERFIELD, ALABAMA, *July* 1, 1882.

A meeting of the board of directors of this Co. was held at the general office of the company in Brierfield. Present were Caswell C. Huckabee, R. L. McCalley, T. J. Peter, and John G. Murray.

1076 R. L. McCalley tendered his resignation as director of this company. Resignation was accepted, and on motion of T. J. Peter, Nelson Robinson, of 78 Wall St., New York, was elected to fill the unexpired term of R. L. McCalley, resigned.

On motion of C. C. Huckabee, the president of the company was authorized to publish the following notice:

Notice is hereby given, in conformity with the provisions of the statute in such cases made and provided, that there will be a meeting of the *the* stockholders of the Brierfield Coal and Iron Company held at the office of said company in the town of Brierfield, county of Bibb, State of Alabama, at 9 o'clock a. m., on Friday, Aug. 25th, 1882, to consider the propriety of placing mortgage upon the property of said Co. and the issuance of bonds thereunder."

The board then adjourned to meet at the call of the president.

JOHN G. MURRAY, *Sec't'y.*

This is to certify that the above advertisement has been published in the Bibb Blade 4 successive weeks, beginning Aug. 3rd, 1882, and ending August 24th, 1882.

J. M. LANGSTON & CO.,
Per S. H. GIST.

BRIERFIELD, ALA., *Aug. 25th*, '82.

In accordance with published notice, a meeting of the stockholders of the Brierfield Coal and Iron Co. of Alabama was held at the office of the company in the town of Brierfield. The meeting was adjourned until Friday at 9 o'clock a. m., Sept. 1, 1882.

T. J. PETER, *Pres't.*

JOHN G. MURRAY, *Sec't'y.*

1077 BRIERFIELD, ALA., *Sept.* 1, '82.

The adjourned meeting of stockholders of Brierfield Coal and Iron Company was held at the office of the company in the town of Brierfield. A mortgage to Preston B. Plumb, trustee, was read, considered, and approved, and the directors of the company authorized to execute the same by the unanimous vote of the stockholders of said company. The following by-laws were adopted by the stockholders:

* * * * * *

At this time regular record book of company was obtained and all foregoing and succeeding transactions of directors and stockholders were copied and entered therein.

JNO. G. MURRAY, *Sec'y.*

1078

Date.	Names.	Am'ts.	No.
1882.			
June 24.	Antony Willis	1 00	
" "	Frank Robertson	1 00	
July 1.	Alex. Wesley	75	
" "	Jim Mickson	25	
" "	Jack Fair	25	
July 8.	Ant. Willis	25	
" "	H. Brumfield	25	
" "	Evison Powell	25	
" 22.	Mose Ward	25	
Aug. 5.	Albert Turvey	25	
" 19.	Austin Goodwin	25	41
" "	Bob Enman	25	61
" "	Gen'l Pickett	40	149
" 26.	Hill Walker	25	58
" "	Ben. Morris	50	63
Sept. 9.	John McElwain	75	89
" 16.	Owen Hatch	25	59
" 30.	C. Leeds	1 00	30
		8 15	
1883.			
May 31.	W. Ustenow	3 85	23
	C. Warren	50	33
	Jas. Smotheman	25	45
	E. Mathers	15	103
	John Mahoney	2 00	124
	Fred. Smith	25	126
	Geo. Washington	50	53
	Ant'y McSpee	75	24
	Wes. Thomas	75	52
June 30.	Joe Davis	1 25	56
	K'y Andrews	2 75	11

Date.	Names.	Am'ts.	No.
1883.			
June. 30.	James Walls	1 50	10
	Bill Nass	75	8
	Alf. McDowell	1 75	6
	Due Bill	4 80	140
	F. Bernhard	25	119
	Bob	1 50	109
	C. Curry	1 50	108

Date.	Names.	Am'ts.	No.
1883.			
June —.	Wm. Swift	25	91
	S. Baker	50	90
	Wm. Payne	50	86
	Fred. Sanders	1 75	77
	R. Wilson	50	76
	Henry Town	95	73
	W. Huston	1 50	48
	Due Bibb	7 05	43
	Al. Robinson	50	41
	Jno. Wilson	1 50	46
	Tom Faulkner	50	58
	Lewis Sanders	2 00	138
	Miller	1 00	139
	Jas. Lemley	50	169
	Rob't Taylor	50	175
	Curtis Fifer	1 95	310
June 3.	J. Eggleston	50	173
	Arthur Moland	6 60	144
	Amos Johnson	1 50	88
	Due Bill	1 50	67
	Davidson, Phil.	2 00	49
	Jno. Hockinghamer	20	38
	Archie	75	
Furnace.			
July 31.	Geo. Irwin	2 25	3
	Jim Jones	15	14
	Ed. Jackson	3 00	33
	Jim Jones	1 10	40
	Frank Northcutt	1 00	47
	Primus Mosely	75	52
	Frank Ower	75	69
	Geo. West	50	80
	W. D. Carter	65	89
	Henry Sanders	1 00	107
	Frank Ower	25	118
	Sam. Fulton	2 00	122
Mine.			
	Norris Johnson	1 50	35
	Har. Penn	50	69

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Date.	Names.	Am'ts.	No.
Grade. 1883.			
July 31.	Dug Caloe	50	29
	Will Andrews	25	33
	Dan. Toler	75	34
	Willis Burg	1 00	59
	Rob't Stewart	1 00	64
	Jno. Thomas	1 00	66
	Lee Crockett	1 00	67
	Bill Stokes	1 00	70
	And. Jackson	1 75	71
	Hugh Woods	50	74
	Will Killoe	1 00	76
	Jerry Fincher	1 00	77
	Jonas Rutledge	75	80
	Wil. Deu Belb	50	6
	Jas. Smith	50	44
B'x'd.	F. Dexter	1 00	59
	F. J. Jones	5 00	85
	E. Thomas	50	92
	Geo. Jemison	1 00	151
	Eugene Tyler	1 00	152
	A. Blackman	1 00	168
	Thos. Litsey	75	100
	Jno. Stubbs	3 00	108
	P. Hightower	1 00	110
Grade.	Jno. Corner	2 00	130
Aug. 31.	And. Jackson	1 00	22
	Tom Litsey	25	29
	Jno. Evans	1 00	35
	Wilson Marshall	25	49
	Roy Smotheman	3 00	57
	Prince Parker	50	81
	Emmett Fisher	3 20	82
	R. Kelloe	25	84
	Henry Eaton	50	102
	D. Kenard	25	114
	Joe Lee	1 00	116
B'x'd.	W. D. Jones	50	76
	H. F. Mitchell	15	54
	C. T. Jexxers	3 00	64
	Roberts	4 00	84
	J. H. McCrary	95	95
	Dan. Toler	10	106
	W. Maybury	25	110
	W. Daleson	1 25	117
	Dan'l Barber	35	118
	C. J. Jexxers	1 00	121

Date.	Names.	Am'ts.	No.
1883.			
Aug. 31.	Cadmus Nally	1 00	124
	F. Hainny	2 00	130
	J. L. Rice	2 00	172
	Horace Stamps	5 00	182
	Jas. Stewart	5 00	184
	Prince Islett	50	194

Date.	Names.	Am'ts.	No.
	Will Stamps	50	218
	Tom Davis	2 50	224
	Tom Washington	1 25	226
	S. Young	1 00	228
	Wm. Samson	2 50	242
	O. T. Williams	1 00	263
	Jno. G. Huckabee	3 65	298
Furnace.	Geo. Irwin	25	21
	Jas. Pierpont	3 00	27
		2 75	42
	√K'y Burk, paid 12 | 30, '83	√50	√35
Grade.	Joe Randle	50	6
	Horace Oden	7 00	11
	Chas. Abner	2 00	24
	Amos Cromsly	1 00	29
	Hugo Zeneick	3 00	33
	Jeff. Calley	50	42
	Prince Ilet	1 00	44
	David Crimmon	2 00	50
	And. Clark	1 25	56
	Em. Fisher	1 00	62
	Sam. Davis	4 75	66
	J. Woolsen	1 25	70
	S. King	50	75
Mine.	Ad. Conley	25	86
	E. E. West	60	24
	Geo. Sullin	1 50	110
	Total this entry	210 95	
F'ce.			
1883.			
Sept. 30.	Jeff. Wicker	3 50	9
	Jas. Fulton	3 00	12
	Jas. Prentice	50	14
	√H'y Burk, paid 12 | 30, '83	√3 00	√27
	√Dav. Battle, paid 12 | 30, '83	√1 00	√29
	Chas. Korthcutt	1 00	31
B'x'd.	Geo. Harris	1 00	114
	Jack Smith	1 00	115
	And. Fielas	1 00	127

Date.		Names.	Am'ts.	No.
1883.				
Sept.	30.	H'y Sanders	1 75	129
		L. Harroll	50	138
		D. Conley	25	139
		C. King	50	144
		Jno. Cottingham	50	146
		Geo. Kelly	55	147
		Wm. Curtis	50	162
		Pitt James	4 00	169
		Turner Houston	75	169
		Rob't Johnson	1 50	187
		Fred. Smith	12 00	220
Grade.		Mon. Abner	1 00	112
		Toney Smotheman	50	96
		Jas. Harris	25	93
		K'y Thomas	50	73
		Al. Blackman	1 00	59

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Date.		Names.	Am'ts.	No.
1883.				
Grade.				
Sept.	30.	Geo. Lee	50	37
		Arms Adams	1 50	5
		Lem. Harroll	1 75	14
		Sye Glover	25	4
		Will Cross	1 00	292
		R. Sharp	50	287
		Fate Cloden	1 00	282
		Geo. Godwin	25	279
		Lee Tyder	1 00	277
		G. Kelly	1 00	262
Mine.		Ed. Lumpkin	2 18	175
		Sam. Sanders	12	168
		Chas. Warren	3 75	80
		S. Sanders	1 62	77
		Jno. Greennird	50	30
Oct.	31.	Chas. Stevison	2 50	69
B'x'd.		Geo. Lewellen	28	30
		Wash. Relsey	20	91
		A. Green	1 50	84
		Chas. Cooper	1 00	70
		Jno. Reese	25	41
		Rob't Hunter	3 00	22
		Tom Davidson	05	21
		Rob't Young	5 00	6
		Paul Dexter	1 50	13
Grade.		Tom Jones	75	14
		Israel Bell	1 25	15
		H'y Gardner	50	25

Date.	Names.	Am'ts.	No.
1883.			
Oct. 31.	Israel Bell	2 00	48
	Dan'l Atwood	50	66
	Chas. Thomas	50	38
Nailing.	Homer Hill	50	98
	C. Thomas	1 00	79
	E. Dyson	56	2
	Jim Smith	6 00	65
	Thos. Harris	1 75	55
	Marion Harrison	35	43
	Walter Reese	35	42
Mine.	Thos. Haralson	50	50
	Jerry Houston	50	83
Mine.	Alex. Jones	9 50	77
Sept. —.	Due bill	1 87	170
B'x'd.	" "	2 00	10
Oct. —.	" "	1 50	20
	" "	1 00	30
	" "	5 00	36
Mine.	Wm. McLaughlin	3 00	190
	" "	22 00	4
Nov. —.	Dan. Petts	3 85	14
B'x'd.	Lem. Haywood	50	31
Nov. —.	Due bill	2 00	13
	H'y Matley	75	24
	Tom Freeze	6 00	11
	Lewis Kelloe	1 00	18
	Tom Freeze	1 00	32
	Pres. Johnson, paid	50	31
	Coleman Clay	50	35
	Tom Back	2 34	6
	G. R. Robes	47	29
	Al. L. Gunn	25	53
	Tom Freeze	50	34
	Chas. Roberts	1 50	40
	Jno. Alexander	1 50	48
	Henry Toune	1 25	72
	Geo. Reynoldson	50	85
	Wiley Large	2 00	92
	Richard Craig	2 00	96
	Josh James	50	105
	Ed. Martin	5 00	109
	Due bill	1 00	1
	" "	3 00	1
	" "	1 00	28
	Dan. Toler	1 80	41
Dec. —.	Tom Reynolds	50	38
B'x'd.	Hugh McSweeny	1 24	329
	Bee Smith	1 05	283
	Thos. McCaffery	50	289

Date.	Names.	Am'ts.	No.
1883.			
Dec. —.	Frank Lewis	1 80	301
	J. H. Satterwhale	2 25	302
	Ben. Smith	95	311
	Due bill	2 00	8
	" "	2 00	305
Dec. —.	Chas. Sims	25	30
B'x'd.	Jno. McCalley	20	32
	Bird Ashley	1 75	50
	Wylie Hill	95	5
	W. D. Jones	1 55	17
	James Jones	1 25	184
	H'y Matley	25	243
	Tom Reynolds	90	265
	Andrew Cleveland	2 00	203
	Geo. Brown	4 00	218
	Griffin Johnson	25	124
	Crawford Harris	25	143
	Jost James	4 50	145
	Allen Wood	1 00	162
	Frank Snowden	50	169
	A. Wildsmith	1 00	175
	Syd. Martin	25	178
Mine.	N. Keith	50	179
	Chas. Stevison	50	130
	Jno. Young	35	132
	Coleman Clay	20	134
	Marc Shelby	90	146
	Sam. Henry	35	152
	Chas. Lucas	40	172
	Chas. Johnson	1 60	180
	Lewis Andrews	50	182
	H'y Delardelaben	2 25	185
	H'y Perry	1 35	187
	Jack Rodgers	1 50	190
	Steve Herring	2 30	16
	Geo. Cavers	1 00	22
	Total two entries	228 63	

		No.	Am'ts.
Military.			
1884.			
Jan'y 31.	Eugene Tyler	25	40
	Shef. Woms	65	1 20
	K'y Towers	24	60
	Jno. Duncan	177	50
	Scott Owens	103	1 00
	Scott Owens	102	1 00

Date.	Names.	No.	Am'ts.
1884.			
Jan'y 31.	Jerry Ross	18	50
	Lena Lee	"	30
	Isam Wilson	17	30
	Jno. Young	16	60
	Homer Hill	13	2 20
	Essie Gardner	"	05
	Ed. Sucker	129	90
	Will Brown	113	05
	Ike Bates	82	80
	Dan. Pitts	71	75
	Tom Reynolds	64	15
	Ed. Sulcer	62	45
	Will Morton	51	30
	Will Smotheman	41	3 00
	Ed. Sulcer	36	25
	B. Scott	"	15
	Nattey M. Carhise	30	1 50
	Nath. Clay	202	25
	Rob't King	196	50
	Wylie Smotheman	175	90
	Due bill	154	75
	Dan. Hammons	165	75
	Wylie Large	158	1 75
	Tom Moreland	157	25
	Bill Jones	146	90
	Due bill	133	1 50
	" "	136	1 00
	Will Morton	148	75
	Wylie Hill	1	8 06
	Jno. Matheny	2	8 51
1081		2 00	
1886.			
Furnace.			
Nov. 30.	Bill Martin	129	05
	Ed. Fulcer	134	2 50
	Anderson King	23	45
	Armstead Owen	131	50
	Perry Jones	83	20
	Jesse Cartwright	10	4 55
	Lloyd Webster	76	05
	Frank Griffin	106	35
	Ed. Norris	133	30
	Orange Hargrove	94	90
	Jim Cunningham	89	10
	Geo. Mixon	88	90
	Frank Henderson	84	20
Mine.	Alex. Pope	78	35
Bfd.	Jno. Graham	119	25

Date.	Names.	No.	Am'ts.
1886.			
Nov. 30.	S. M. Johnson	--	50
	Jim Espey	--	90
	W. Y. Huckabee	656	15
	W. M. Delaney	16	70
	J. C. Denagen	17	25
	Tom Boon	22	10
	Capt. Alvis	20	1 00
	Andrew Jackson	--	5 00
	Henry Davis	42	1 65
	Bob Thornton	9	45
	McWallace	509	50
	Geo. Harrell	528	50
	Julius Davis	7	05
	Will. Avery	8	10
	Wesley Hamilton	79	1 00
	Bill Davis	101	1 10
	Sye Davis	132	40
	Jeff. Davis	133	15
	Bill Jones	156	20
	Maria Killon	205	05
	John Nix	219	20
	Geo. Evans	261	25
	Joe Donigan	351	75
	Let. Parsons	--	35
	W. M. Glenn	403	1 80
	Rich. Williams	554	1 00
	John Miller	406	05
	Houston, Bill	487	50
	Henderson Glover	508	2 50
	Steve Brown	510	50
Mine.	Jerry White	556	65
Dis.	Geo. Todd	19	30
	John Brantley	22	90
Furnace.	H. Bowden	33	20
	Gus. Moore	5	45
	Walker King	9	05
	Morgan Tilton	84	1 25
1887.			
	Dick Powell	87	70
	Ed. Norris	104	05
	Anderson Shepherd	118	10
	Geo. Owen	125	3 35
Bfd.	Jim King	129	15
Dec. —.	John Lake	692	50
	J. D. Hicks	681	6 05
	Underson Shepherd	349	1 35
	Sidney Madison	346	1 10
	Pete Davis	338	1 55
	Ed. Gayle	335	1 10

Date.	Names.	No.	Am'ts.
1887.			
Dec. —.	Ed. Norris	334	1 60
	Madison Fuller	355	70
	Geo. Owen	360	90
	Neol Bennefield	351	1 35
	Dave Fluker	354	40
	Anthony Madison	312	55
	Nath. Sturdivant	317	25
	F. M. O'Shields	392	55
	" "	442	1 25
	J. R. Rice	611	1 70
	Bill Jones	633	45
	John Dayle	408	10
	Frank Robinson	242	4 30
1887.			
Bfd.			
Dec. —.	B. M. Newman	227	10
	Jim Thomas	214	10
	Geo. Malvy	161	1 10
	Dan. Mann	154	05
	Ed. McMicken	137	05
	Jim Smith	134	18 00
	Turner Goodwin	32	2 65
	Chas. Bell	1	60
	S. A. Owen	615	1 60
	" "	616	6 40
	Chas. Waddle	634	45
	Tom Bibb	637	2 25
	A. Campbell	640	05
	Steve Brown	642	1 00
	Tom Bibb	649	50
	Jesse Coleman	670	80
	Jash Moore	686	10
	Jim Hayden	693	85
	W. T. Huckabee	716	45
	Dr. Whitfield	742	5 75
	W. D. Carter	746	1 15
	Ellis Hall	753	10
Jan'y —.	Winston Nolann	756	1 25
Furnace.	Geo. Erwin	139	90
	Chas. Russell	126	55
Bfd.	Chas. Richardson	648	1 80
	Epha Pern	647	1 80
	Sam. Crumpton	656	1 05
	Bob Duncan	657	20
	Steve Parker	653	50
	Geo. Coleman	330	55
	Jim Smith	333	75
	Chas. Day	340	65
	Will. Banks	344	10

Date.	Names.	No.	Am'ts.
1887.			
Jan'y —.	John Brown	342	05
	Osborn Smith	345	15
	Gus. Collins	348	55
	Gruber Thomas	371	05
	Leo Baker	381	6 60
	J. F. Day	430	05
	Henry McCarrell	561	15
	J. T. Mitchell	516	2 45
	Steve Wellingham	518	05
	Dave Smith	521	90
	Frank Woods	--	00
	Isam Clayton	544	45
	Anthony Madison	575	10
	Frank Robinson	592	2 05
	Wiley Hill	1	1 65
	Pete Wallace	555	4 85
	Peter Davis	560	10
	Jesse Touey	"	40
	Rufe Shawcraft	15	05
	Joe Nailen	20	00
	Geo. Fisher	114	75
	Gen'l Wallace	23	2 00
	Dan. Andrews	4	50
	Ike Wilkerson	86	50
	Geo. Farquhar	628	1 40
	Bob Plumb	622	3 15
	Henderson Harris	623	1 05
	D. J. Cranson	601	1 10
	" "	174	90
	Calvin Smoton	167	20
	Lige Crenshaw	165	10
	Jack Lei	146	4 30
	Jeff. Thomas	145	3 40
	Alf Averyt	141	45
	Geo. Todd	133	10
	Sandy Norwoon	130	90
	Amos Edwards	123	05
	Sam. Phillips	121	1 25
	Armstead Owens	120	1 80
	John Payne	117	40
	Wm. Smotheman	103	1 25
	Winston Noland	112	10
	D. J. Crousen	102	75
	Gilbert Moore	--	1 50
	W. F. White	65	05
	Jack Sims	40	05
	Jas. Cavanaugh	31	00
	Frank Robinson	606	85
	Brooks Gray	171	30
	John Gardner	21	4 20

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Date.	Names.	No.	Am'ts.
1887.			
Bfd.	Alf. Owen	231	2 10
	Henry Eaton	219	1 85
	Jeff. Joucker	218	1 00
	Pat. Shea	--	2 80
	Walter Smotheman	124	0 00
M'ch. —.	Sam. Hudson	605	05
Bfd.	W. Powen	606	1 90
	Geo. Robertson	630	05
	Gus. Tolbird	631	05
	Tom Barker	26	1 25
			22 30
			33 60
			75 50
			37 70
			189 10
Feb'y —.	Subscription	26	50
Bfd.	Capt. Ani	23	1 00
	Cold Church	22	3 00
	J. S. Morrill	21	90
	Tam Gowan	727	75
	John Cashatt	726	1 35
	Sandy Norwood	513	05
	Jonas Statworth	545	1 35
	D. Laughlin	489	2 05
	A. Long	2	05
	Tim. Higgins	11	6 80
	A. M. Outlaw	18	05
	W. M. Brown	132	05
	Henry Jackson	155	15
	Jim Clay	140	80
	Will. Coleman	144	05
	Grant Walker	191	90
	Jim Allen	335	75
	Ed. Furlough	258	10
	Abe Young	278	80
	Lucius Erwin	425	05
	Geo. Prentice	438	45
	Dumbo Avenyt	471	70
Furnace.	Jim Ford	37	70
	Ben. Stevens	27	45
	B. I. Coats	56	1 50
	John Allen	76	2 10
	Dr. Whitfield	9	2 00
	W. D. Carter	10	3 00
Mine.	Henry Burrill	110	1 90

Date.	Names.	No.	Am'ts.
1887.			
Feb'y —.	Lewis Andrews	64	1 25
	Jerry Turnbow	86	1 35
	Lewis Andrews	92	60
	Jordan Anderson	97	35
M'ch —.	Sam. Lee	98	95
Bfd.	John Clements	271	1 75
	John Burnets	225	20
	Dave Porter	211	40
	Nick Howard	210	40
	Will. Badis	192	1 50
	J. M. Ruse	184	65
	Geo. Davis	166	80
	B. J. Jeffcoot	160	10
1887.			
M'ch —.	Will. Badis	137	05
Bfd.	Jim Henry	131	05
	Geo. Maberry	73	05
	Leonard Mechou	64	1 00
	John Burnett	--	55
	Porter Crenshaw	10	15
	Tom Barker	480	50
	T. D. Jones	462	1 20
	John Wildsmith	447	05
	T. D. Jones	430	05
	Ed. Alender	426	05
	Al. Harrington	418	1 10
	A. C. Parks	403	10
	Henry Town	284	05
	Will. Glover	383	05
	R. Echard	351	45
	Monroe Aroman	335	20
Mine.	Spencer Dangerfield	313	85
Furnace.	Allen Peaples	119	3 15
Mine.	Joe Brown	176	1 40
	John Fuller	2	50
	Crawford Sharp	109	2 15
	Jim Hatcher	110	3 81
	Ike Stubbs	111	1 30
	Charlie Robins	89	50
	Tom Rall	76	1 75
			25 25
			47 80
			$73 05

1083 *Brierfield Coal and Iron Co. in Account with Memphis Nat. Bank, of Memphis, Tenn.*

APR. 30, '88.

DR.			CR.		
			1887.		
To sundry payments (vouchers herewith):			Nov. 23. By bal. ac. rend.		2,329 74
	1,612	10*	30. F. F. & Co.		495 15
	1,600	00*	Dec. 29. Toof, McG. & Co.		56 25
	1,600	*	30. Day, H. & B.		183 75
	✓ 8	25	1888.		
	✓ 126	76	Jan. 30.		1,189 40
	✓ 5	45	Feb. 10. Treadwell & Co.		460 00
	✓ 5	50	13. Brook, N. & Co.		230 00
	✓ 3	52	" Des Jarden, M. & R.		235 00
	1,600	00	" Mem. Gas Co.		172 50
	✓ 800	00			
	✓ 116	37			
	✓ 88	33			
	✓ 5	50			
Bal.	2,592	19			
	5,351	87			5,351 89
Note past due since Nov. 20, '88	5,000	00	1888. Apr. 30. By balance		2,592 19

Brierfield Coal and Iron Company in Account with Memphis National Bank, Memphis, Tenn.

SEPT. 26, 1886.

DR.			CR.		
1888.			1888.		
June 5. To insurance		5 50	Apr. 30. By bal. ac. rend.		2,592 19
" 30. "		19 25	July 16. " Schoolfield, H. & Co.		1,500 00
Aug. 3. Storage on nail		161 41	Aug. 4. Ellis, Taylor & Co.		63 50
Sept. 10. Payment on note of of $5,000, due Nov. 20, '87	3,969	53			
	4,155	69			4,155 69
Sept. 26. To balance due on interest to Sept. 10, '88, incl., chg. ac. this date	192	70			

1084 $1,600. BRIERFIELD, ALA., *July* 26, 1889.

Five months after date we promise to pay to the Memphis National Bank or order sixteen hundred dollars, value received, at the Memphis National Bank, Memphis, Tenn.

Due Dec. 29, '87.

BRIERFIELD COAL AND IRON COMPANY,
By T. J. PETER, *Pres't.*

$800.00. BRIERFIELD, ALA., *Aug.* 2, 1887.

Five months after date we promise to pay to order of Memphis

*In previous statement. Erased in copy.

National Bank eight hundred dollars, at the Memphis National Bank, Memphis, Tenn., value received.

Due Jan. 5, 1888.

BRIERFIELD COAL AND IRON CO.,
By T. J. PETER.

1085 No. 103.

Pages 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, and 36, Record Book marked B. C. &. I Co.

Office of the Brierfield C. & I. Co.

BRIERFIELD, ALABAMA, *Sept. 1st*, 1882.

A meeting of the directors of the Brierfield Coal and Iron Company was held here to-day.

There were present C. C. Huckabee, John G. Murray, and Thomas J. Peter.

Motion to adopt the seal of the company as presented carried.

Motion of C. C. Huckabee that the officers of the company be directed to execute the mortgage of even date, read to the board of directors and authorized by the stockholders at their meeting here to-day, carried.

Motion to adjourn, to meet at the call of the president, carried.

T. J. PETER, *President.*
JOHN G. MURRAY, *Secretary.*

Office Brierfield Coal & Iron Co.

BRIERFIELD, ALABAMA, *October 15th*, 1883.

A meeting the directors of this company was held here to-day. There were present C. C. Huckabee, Thomas J. Peter, and John G. Murray. On motion of C. C. Huckabee, the salary of the president was fixed at six thousand dollars per annum.

On motion of Jno. G. Murray, the meeting adjourned to meet at the call of the president.

T. J. PETER, *President.*
JNO. G. MURRAY, *Secretary.*

Office Brierfield Coal & Iron Co.

BRIERFIELD, ALABAMA, *July 9th*, 1884.

1086 A meeting of the directors of this company was held here to-day pursuant to call of the president. There were present C. C. Huckabee, Thos. J. Peter, and Jno. G. Murray.

The following motion was made, seconded, and unanimously carried:

Resolved, That an assessment of twenty per cent. upon the stock of the company be levied, payable at the office of the company in Brierfield, as follows: Ten per cent., payable Aug. 1st, 1884; five per cent., payable October 1st, 1884; two per cent., payable January 1st, 1885, and three per cent., payable April 1st, 1885.

The board then adjourned to meet at the call of the president.

T. J. PETER, *President.*
JOHN G. MURRAY, *Secretary.*

Office of the Brierfield Coal & Iron Co.

BRIERFIELD, ALABAMA, *April 20th*, 1885.

A meeting of the directors of this company was held here to-day pursuant to a call of the president. There were present C. C. Huckabee, Thos. J. Peter, and John G. Murray.

Nelson Robinson, of No. 78 Wall street, New York, tendered his resignation as a director of *its* company, which was accepted. Edward T. Peter was then — to fill the vacancy thus occasioned in the board of directors. An additional assessment of 7% was levied on the stock of the company, making total assessment of 27%, all of which is to be paid in cash or coupons on or before October 1st, 1885.

The following resolution was then offered and adopted:

"Resolved, That the president is authorized to make a contract with a railroad company to be organized to build a railroad from Brierfield by the Bibb Furnace, by which the Brierfield Coal & Iron Co. will sell for cash to said proposed railroad
1087 company the right of way, grade, and material on land between Brierfield and Bibb Furnace, and will lease, maintain, and operate so much of said proposed railroad as lies between Brierfield and the Big Cahaba river, and pay as rental for same semi-annually an amount equal to the semi-annual interest, at the rate of seven per cent. per annum, on the bonds to be issued by said proposed railroad company on that portion of their railroad so leased, providing said bonds shall not exceed more than enough, at ninety per cent. of their par value, to pay for the actual costs of said railroad."

The board then adjourned to meet at call of the president.

T. J. PETER, *President.*
JOHN G. MURRAY, *Secretary.*

Office Brierfield Coal & Iron Co.

BRIERFIELD, ALABAMA, *January 1st*, 1886.

A meeting of the directors of this company was held here to-day. There were present C. C. Huckabee, Thos. J. Peter, and John G. Murray. The following preamble and resolution was made, seconded, and unanimously agreed upon:

Whereas the Brierfield Coal & Iron Company owes to various parties about one hundred and fifty thousand dollars; and whereas it is deemed expedient that during the year 1886 A. D. certain moneys should be paid by assessment on the stockholders: Thereupon resolved, That an assessment of thirty per cent. (30%) upon
1088 the stock of said company be levied, payable during the year 1886 in cash, coupons, or bonds of the company at 95% of their par value.

The board then adjourned to meet at a call of the president.

T. J. PETER, *President.*
JOHN G. MURRAY, *Secretary.*

Office of Brierfield Coal and Iron Company.

BRIERFIELD, ALA., *December 15th*, 1886.

A meeting of the directors of this company was held here to-day. There wer- present T. J. Peter, John G. Murray, and E. T. Peter. John G. Murray tendered his resignation as secretary of the company, which was accepted, and E. T. Peter was then elected secretary to fill the vacancy. There being no other business before the meeting the directors adjourned to meet at the call of the president.

T. J. PETER, *President.*
E. T. PETER, *Secretary.*

Office Brierfield Coal & Iron Co.

BRIERFIELD, ALA., *July* 29, 1887.

The board of directors of the Brierfield Coal & Iron Company met at the office of the company pursuant to the following notice:

JULY 18TH, 1887.

E. T. Peter, sec. Brierfield Coal & Iron Company:

You will please notify each director of the Brierfield Coal and Iron Company that there will be a meeting of the directors of the said company held at its office, in Brierfield, at nine o'clock a. m., on Friday, the 29th instant.

(Signed) T. J. PETER, *Pres't.*

The board met at nine o'clock a. m. There wer- present T. J. Peter, John G. Murray, and E. T. Peter. The board adjourned to meet at six o'cock p. m. on same day and at same place.

T. J. PETER, *Pres't.*

E. T. PETER, *Sec'y.*

1089 Office of the Brierfield Coal & Iron Company.

BRIERFIELD, ALA., *July 29th*, 1887.

The board of directors met at the office of the company at six o'clock p. m., pursuant to adjournment. There were present T. J. Peter, John G. Murray, and E. T. Peter, and the following letter was received by the president from Director C. C. Huckabee:

"ANNISTON, *July 29th*, 1887.

Mr. Peter.

DEAR SIR: I am too unwell to go to Brierfield to-day, but if Saturday or Monday will answer I will come if I am able. Very sorry I cannot go to day. Let me hear from you.

Respectfully, C. C. HUCKABEE."

On motion of John G. Murray, the resignation of A. A. Southwick as director of the Brierfield Coal and Iron Company was accepted and Chas. L. Bates was elected as director to fill the vacancy. Mr. Chas. L. Bates then appeared and took his seat as director.

E. T. Peter then offered the following resolution, which was adopted, and the president and secretary directed to act in accordance therewith:

Whereas, on the 23d day of November, 1883, ten shares of the stock of the Brierfield Coal and Iron Company were, without authority of the board of directors of the Brierfield Coal and Iron Company, issued to John G. Murray, on which he has paid the sum of six hundred dollars and desires to surrender to the said company four shares of said stock:

Resolved, That the Brierfield Coal and Iron Company accept the return of four of said shares of stock from said John G. Murray, and that the president and secretary be directed to issue to him a
1090 new certificate for six shares of said company's capital stock in lieu of the remaining six shares in certificate for ten shares, and that said six shares are fully paid up and constitute said Murray a stockholder of said corporation to that extent.

The following resolution was offered by John G. Murray and adopted, and the president and secretary authorized to act in accordance therewith:

Whereas Thomas J. Peter, on the 4th day of May, A. D. 1882, subscribed for twelve hundred shares of the capital stock of the Brierfield Coal and Iron Company of the par value of one hundred dollars each, upon which subscriptions he has paid in money the sum of eighty-three thousand six hundred and forty dollars and eighty-five cents ($83,640.85); and

Whereas said Thomas J. Peter has become the surety of said company for the loan from time to time to it of the sum of seventy-*seventy*-seven thousand eight hundred dollars ($77,800.00), which money has been used in the current business of said company, and has put his private property in pledge, to secure such indebtedness, to various persons and banks, all of which indebtedness appears on the books of said company as being unpaid:

Resolved, That the balance unpaid on subscription of stock—namely, the sum of thirty-six thousand three hundred and fifty-nine and $\frac{15}{100}$ dollars ($36,359.15)—shall not be called for or demanded of said Thomas J. Peter, but shall remain in his hands as indemnity to him against his said liabilities for said company so secured by him, and he shall be in nowise liable to pay the balance that is or may be owing to said company on the said stock subscription, but the said stock shall be held and considered as being fully paid
1091 up and the unpaid balance due *due* thereon shall be cancelled and shall so remain credited on the books of the company until said company shall have fully released and discharged him from his said liabilities for said company and shall have released the property pledged by said Thomas J. Peter as security for the debts of said corporation; and the secretary of said company shall deliver to said Thomas J. Peter a certificate that his stock is fully

paid up, and said Peter may, if he sees proper, assign and transfer said certificates of stock on the books of said company as stock fully paid up.

The following resolutions were offered by John G. Murray and adopted, and the president and secretary directed to act in accordance therewith:

Whereas there was issued to Thomas J. Peter, as trustee, on the 28th day of October, 1884, twenty-eight hundred and fifty-nine shares of the capital stock of the Brierfield Coal and Iron Company at the par value of one hundred dollars each; and whereas the said Thomas J. Peter has paid to said company the sum of $83,640.85 on his subscription of $120,000.00, and Esther A. Peter has paid $50,000.00 on her subscription of $50,000.00; and whereas her stock for said payment was issued to Thomas J. Peter, trustee; and whereas said Thomas J. Peter offers to surrender eleven hundred and sixty shares of said capital stock which was improperly and illegally issued and presents the same for surrender: Therefore

Resolved, That the Brierfield Coal and Iron Company accept the surrender to said company of certificate number 36 for 2,859 shares of its capital stock, and hereby authorizes the issue of certificate number 44 for 500 shares of capital stock, fully paid up, to Esther A. Peter, and the issue of certificates number 41 and 42 for
1092 1,197 shares of fully paid up capital stock to Thomas J. Peter or his assigns.

On motion of E. T. Peter the following resolution was adopted:

Resolved, That for the purpose of complying with section 6 of the deed of trust executed and delivered by the Brierfield Coal and Iron Company of Alabama on the first day of September, 1882, to Preston B. Plumb, trustee, and upon the written request of said trustee now presented, which request is as follows:

"To the Brierfield Coal and Iron Company of Brierfield, Alabama:

Pursuant to the promises and obligations of a certain indenture of mortgage mad- and executed by you to the undersigned, as trustee, bearing date September 1st, 1882, for the purpose of securing upon the property therein mentioned and described certain bonds, amounting to the total sum of five hundred thousand dollars, I hereby request you to execute, acknowledge, and deliver to me, as trustee as aforesaid, a further mortgage or other proper conveyance, whereby you shall convey to me, as trustee as aforesaid and for the uses and purposes of this trust in said first-mentioned instrument set out, all property, both real and personal, by you acquired since the date of said first-mentioned mortgage; and that you will also in said mortgage or other conveyance accurate, and fully set out and describe by numbers, meet-s, and bounds, location, or otherwise all lands which at the last said mentioned date were owned by you and which are covered by or designed to be covered by said first-mentioned mortgage, and which property was made the basis of said mortgage and was actually pledged for the security of the bonds therein
1093 mentioned, and also all personal property now owned by you which was so owned at the date of said mortgage, and also

all franchises held at said date or thereafter acquired, and als- to execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in law for the better assuring to me, as such trustee, upon the trust expressed in said mortgage the property and premises therein conveyed or intended to be conveyed, and all property and franchises then held or thereafter acquired, and generally to do and perform such acts and things as shall make subject to the assurance and payment of said bonds of five hundred thousand dollars all the property, both real and personal, now owned by you.

Witness my hand this 25th day of July, 1887.

PRESTON B. PLUMB, *Trustee.*"

It is ordered that the president of said company, in the name of said company and under its corporate seal, cause to be executed and attested by him and by the secretary of said company the deed of conveyance and further assurance now here read and examined and approved by the board of directors of said Brierfield Coal and Iron Company of Ala., which deed bears date on this day and is ordered to be copied on the minutes of said board.

It is further ordered that the president of said board of directors cause said deed to be duly acknowledged or proven and recorded in accordance with the laws of Alabama.

The board then adjourned to meet at the office of the company on Tuesday, August 2nd, at 9 o'clock a. m.

T. J. PETER, *Pres't.*

E. T. PETER, *Secretary.*

1094 Office of Brierfield Coal and Iron Company.

BRIERFIELD, ALA., *August 2d*, 1887.

The board of directors met pursuant to adjournment, at office of the company, at 9 o'clock a. m.

There were present T. J. Peter, John G. Murray, Chas. L. Bates, E. T. Peter, and C. C. Huckabee.

The following resolution was offered by Chas. L. Bates and adopted:

Whereas Preston B. Plumb, trustee, in a deed of trust executed by the Brierfield Coal and Iron Company on the first day of September, 1882, has demanded in writing the property of said company of every kind and character covered by said lien, which *which* demand is in the words and figures following, namely:

To the Brierfield Coal and Iron Company of Brierfield, Alabama:

Pursuant to the promises and obligations of a certain mortgage executed to me as trustee by you, bearing date September 1st, 1882, for the purpose of securing upon the property therein mentioned and described certain bonds, amounting to the total sum of five hundred thousand dollars, and especially in pursuance of articles second and third, and because of the non-payment of the interest upon said bonds, and because of the non-payment of the sums required as a sinking fund by the terms of said mortgage, and default in the

payment of interest and in the payment of sinking fund having both continued for a period of more than six months, I
1095 hereby demand possession of all the property conveyed by said mortgage for the uses and purposes of the trust created thereby and in accordance with the terms, conditions, and limitations.

Witness my hand this first day of August, 1887.

PRESTON B. PLUMB, *Trustee.*

And whereas said Preston B. Plumb, as trustee, has appointed John G. Murray as his agent to take charge of and control said property, which appointment is now hereby exhibited to the board of directors of the Brierfield Coal and Iron Company and is in words and figures following, namely:

To John G. Murray, Esqr., Brierfield, Alabama.

SIR: I hereby appoint and empower you as my agent, in my name and stead, as trustee of a mortgage upon the same, to enter upon and take possession of all and singular the property of the Brierfield Coal and Iron Company of Brierfield, Alabama, holding and operating the same according to my orders and instructions.

Witness my hand this first day of August, 1887.

(Signed) PRESTON B. PLUMB, *Trustee.*

And whereas the statements made in said demand are true and said Brierfield Coal and Iron Company is bound by its covenants in said trust deed to deliver the property included in said deed in the custody and possession of said trustee, to be controlled and managed by him in accordance with said deed; and whereas the said Brierfield Coal and Iron Company on the 29th day of July, 1887, in compliance with the covenants and stipulations in said
1096 deed above mentioned, made, executed, and delivered to said Preston B. Plumb, trustee, a further assurance and conveyance of all the property of said company acquired since the first day of September, 1882, and more fully and completely describing the property included in said deed of trust: Now, therefore, it is

Resolved, That the board of directors of the Brierfield Coal and Iron Company direct that all the property of said company conveyed in said deeds of trust be, and the same is hereby, surrendered and delivered to the said Preston B. Plumb, trustee, under and in accordance with the provisions of said deeds, and that Thomas J. Peter, the president of said company, is hereby directed to place all of said property in the charge and custody of said Preston B. Plumb, trustee, and that with all convenient speed he will cause a full inventory thereof to be made out and said property receipted for by said Preston B. Plumb, trustee, or his agent, the said John G. Murray, and that said inventory be recorded in the books of said company.

Resolved, That in case the said Preston B. Plumb should file a bill or complaint in any court of law or equity that the president of the company is authorized to file a true answer thereto.

The above resolutions were unanimously carried.

The minutes of the meetings of July 29th were read and approved. There being no further business before the board, it stood adjourned, to meet at the call of the president.

T. J. PETER, *Pres't.*

E. T. PETER, *Secretary.*

1097 *Decree.*

W. L. CHAMBERS, Trustee,
vs.
THE BRIERFIELD COAL AND IRON COMPANY and Others, Defendants. } 103.

This cause came on for hearing, decision, and decree, and the complainant and the defendants who have appeared in the cause and have pleaded therein or have answered came in person or by their attorneys, and the cause was submitted for decree upon the pleadings, the bill, the amended bills and the exhibits thereto, and the decrees *pro confesso*, and upon the evidence taken in the cause, and the proofs made and offered on the hearing, as stated in the note of the evidence as made and filed by the clerk, and also upon the report of J. W. Dimmick, special master in this cause, made in open court at a previous day of this term, and upon the exceptions to said report, which are on file in this cause.

And argument upon said exceptions, respectively, was heard by the court, and the same and the evidence in the cause touching the matters presented and decided in said report were duly considered by the court; and thereupon it is considered, adjudged, and decreed by the court that said several exceptions taken to said report on behalf of Samuel Thomas and his associates, Calvin S. Brice, and George I. Seney be overruled and disallowed, and that the exceptions taken to said report by C. C. Huckabee and Robert L. Mc-
1098 Calley are overruled and disallowed; and there being no other objections or exceptions to said report, and the same being just, lawful, and correct, it is ordered by the court that the same be in all things confirmed.

And upon further consideration of the pleadings and proofs in said cause and of the proceedings therein, it appearing to the satisfaction of the court that the deeds of trust executed by the Brierfield Coal and Iron Company, dated, the first on the 2nd day of September, 1882, and the second on the 29th day of July, 1887, are valid conveyances and create a mortgage lien on the property of said Brierfield Coal and Iron Company mentioned in said deeds of trust and conveyed thereby for the security of the bonds and coupons issued in pursuance of said first-named deed, which lien is paramount to any right of the stockholders or creditors of said company, except as to the debts due Lillian A. Carter, and that a sale of said property under the order of this court is necessary for the payment of said debts, and that it should be sold in a body as one estate and property and not in separate lots or parcels, either as to the real estate

or personal property included in said deeds of trust, and the franchises of said Brierfield Coal and Iron Company and all rights and easements belonging to said company and appurtenant to the property included and conveyed in said deeds, except the sums of
1099 money due to said corporation upon the unpaid subscriptions to the stock thereof and any sums of money that are due or owing to said company which in this decree are otherwise disposed of, should be included in said sale;

And it further appearing to the court that the equity of redemption of said Brierfield Coal and Iron Company arising or existing under said deeds should be foreclosed and forever barred—

It is further ordered, adjudged, and decreed that unless the Brierfield Coal and Iron Company shall deposit in this court by the first (1st) day of August, 1889, in lawful money, the full amount of the costs, commissions, and allowances fixed by the orders and decrees of the court as a charge upon said company, and the full amount of the certificates of the trustees issued by them and obligations entered into by them under and in pursuance of the orders of this court heretofore made, with the interest thereon, and the full amounts of the bonds and coupons issued by said company as the same are ascertained by the special master in this cause and stated in his said report, and all costs, charges, and expenses incurred up to said date in providing for the advertisement and sale of said property, to be taxed by the clerk of this court, then the equity of redemption of said Brierfield Coal and Iron Company shall be forever foreclosed and barred, and the purchaser of said property included in said deeds of trust under this decree shall
1100 take the same and shall acquire a full and complete title to the same when the sale and purchase thereof is confirmed by order of this court.

And the court being satisfied from the evidence in this cause that said deeds of trust above in this decree mentioned are valid conveyances and the sums as stated in the said report of the special master are due to the persons therein stated, respectively, upon the bonds and coupons issued by said company and secured by said deeds of trust, which bonds and coupons are lodged in the office of the clerk of this court and are filed in this cause, and that a sale of said property described in said deeds of trust is necessary in order to raise the money to pay said debts and the other debts and charges upon said property under the orders and decrees of this court and to completely execute said trust—

It is further ordered, adjudged, and decreed that J. W. Dimmick, he, in the opinion of the court, being the fitter person therefor, is hereby appointed a commissioner of this court to sell said property and to convey the same to the purchaser under the orders of the court, and that said commissioner proceed to advertise the sale thereof in The Daily Age-Herald, a newspaper published in the city of Birmingham, Alabama, and in the Daily Dispatch,
1101 a newspaper published in the city of Montgomery, Alabama, and such advertisements in said newspapers shall be sufficient, if they are published once a week for four consecutive weeks, the

purpose being to give reasonable notice of the time and place and terms of said sale, which it is ordered and decreed shall be made in the city of Montgomery, Alabama, on the nineteenth day of August, 1889, within the usual sale hours, in front of the United States court-room.

And after said property is so advertised for sale said J. W. Dimmick, as commissioner, shall sell in one body and as one estate and property the franchises of the Brierfield Coal and Iron Company and all rights, privileges, rights of way, easements, railways, mines, and all things appurtenant to the real and personal property belonging to said company, and all the real and personal property belonging to said company and included in the said deeds of trust to Preston B. Plumb, trustee, above in this decree mentioned—that is to say:

The following-described real estate in Bibb county, State of Alabama, and situate in township twenty-two (22) south, range five (5) west: The southwest quarter (¼) of the southwest quarter of section twelve (12), and the northeast quarter (¼) of the northeast quarter (¼) and the southwest quarter (¼) of the northeast quarter (¼) of section fourteen (14); and the following real estate in
1102 township twenty-four (24) north, range eleven (11) east, namely: The southeast quarter (¼) and the east half (½) of the southwest quarter and the southwest quarter (¼) of the southwest quarter (¼) of section four (4), and the south half (½) of the southeast quarter (¼) and the northeast quarter (¼) of the southeast quarter (¼) and the southwest quarter (¼) of section five (5), and the west half (½) of the northeast quarter (¼) and the north half (½) of the southeast quarter (¼) of section six (6), and the east half (½) of the northeast quarter (¼) of section eight (8), and the west half (½) of the northwest (¼), section nine (9), and the following land: The southeast quarter (¼) and the southeast quarter (¼) of the southwest quarter (¼) of section twenty-four (24), and the northeast quarter (¼) and the south half of section twenty-five (25), and the whole of section twenty-six (26), and the whole of section twenty-seven (27), and the southeast quarter (¼) and the northeast quarter (¼) of the southwest quarter (¼) and the southeast quarter of the northwest quarter (¼) and the south half of the northeast quarter (¼) of section twenty-eight (28), and all the lands lying south of the tram-road in the southeast quarter (¼) of section twenty-three (23), and the whole of section thirty-three (33), and the whole of section thirty-four (34) except the northeast quarter (¼) of the southeast quarter (¼), and the northwest quarter of section thirty-
five (35) except the southwest quarter thereof and the
1103 west half (½) of the northeast quarter (¼), and the land lying north of the grade of the Ashby and Bibb Furnace railroad in the northeast quarter of section thirty-five (35), and also the southwest quarter (¼) of the southwest quarter (¼) of section thirty-five (35), and all of the west half (½) of the northwest quarter of section thirty-six (36) that lies north of the grade of the Ashby and Bibb Furnace railroad, and the west half (½) of the southeast quarter (¼) of section thirty-six (36); also all the

iron ore and the mining rights on the following lands: All of section twenty-two (22), and all lands owned by estate of J. N. Smith in section twenty-one (21), and the north half ($\frac{1}{2}$) of section twenty-eight (28), and the west half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section twenty-eight (28), and the south half ($\frac{1}{2}$) of southwest quarter ($\frac{1}{4}$) of section twenty-three (23); and the following lands in township twenty-three (23) north, range eleven (11) east, namely: All of section one (1) except the south half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$), and all of section two (2) except the southwest quarter ($\frac{1}{4}$) of the northwest quarter ($\frac{1}{4}$) and the northwest quarter ($\frac{1}{4}$) of the southwest quarter ($\frac{1}{4}$) and except northeast quarter of the northeast quarter ($\frac{1}{4}$) of said section two (2), and all of section three (3) except the southeast quarter ($\frac{1}{4}$) of the northeast quarter ($\frac{1}{4}$) and the northeast quarter of the southeast quarter ($\frac{1}{4}$) of said section three (3), and the
1104 northeast quarter ($\frac{1}{4}$) and the east half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) and the northwest quarter of the southwest quarter ($\frac{1}{4}$) and the west half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of section four (4), and the south half ($\frac{1}{2}$) of the north half ($\frac{1}{2}$) and the northeast quarter of the northeast quarter and the northeast quarter ($\frac{1}{4}$) of the southwest quarter ($\frac{1}{4}$) of section five (5), and the northeast quarter ($\frac{1}{4}$) and the east half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of section ten (10), and the whole of section eleven (11) except the southeast quarter ($\frac{1}{4}$) of the southwest quarter ($\frac{1}{4}$) and the south half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of said section eleven (11), and the northwest quarter ($\frac{1}{4}$) of the southwest quarter ($\frac{1}{4}$) of section twelve (12); also the northwest quarter ($\frac{1}{4}$) of the northwest quarter ($\frac{1}{4}$) of section five (5), township twenty-three (23) north, range twelve (12) east; also the following lands in township twenty-four (24) north, range twelve (12) east, namely: The southwest quarter ($\frac{1}{4}$) of the southwest quarter ($\frac{1}{4}$) and the northwest quarter ($\frac{1}{4}$) of the southwest quarter ($\frac{1}{4}$) and the southeast quarter ($\frac{1}{4}$) of the southwest quarter ($\frac{1}{4}$) of section nineteen, and all that portion of the west half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of section nineteen (19) lying north and west of the East Tennessee, Virginia and Georgia railroad; also the following tract: Commencing at the middle of sec-
1105 tion nineteen (19) on the south boundary line of said section, then east on said section line to Mahan's Ford road; thence north to the centre of Mahan's creek; thence down said creek to the middle line of section nineteen (19), running north and south; thence south to the point of beginning; also the following tract of land: The southeast quarter of the northeast quarter and that portion of the southwest quarter of the northeast quarter that lies east of the East Tennessee, Virginia and Georgia railroad, in section nineteen (19), and the north half ($\frac{1}{2}$) of the northeast quarter, and twenty-five (25) acres lying west of the East Tennessee, Virginia and Georgia railroad, in the southwest quarter of the northeast quarter and the east half ($\frac{1}{2}$) of the northwest quarter, except two and twenty-three hundredths ($2\frac{23}{100}$) acres on the east side of Mahan's creek and south of the line commencing in the south line of the northwest quarter ($\frac{1}{4}$) at a point four & fifty-one hundredths ($4\frac{51}{100}$) chains west of the southeast corner of said quarter ($\frac{1}{4}$) section, and

thence running north seventy-one degrees (71°) west magnetic bearing to Mahan's creek; also the following tract in the northeast quarter (¼) of the southwest quarter (¼): Commencing at the northeast corner of said southwest quarter (¼), thence eighty (80) rods south to the southeast corner of the northeast quarter (¼) of the southwest quarter (¼), thence west ten and fifty-hundredths (10.50) chains, thence north eleven and one-half degrees east
1106 magnetic bearing to the north line of the quarter section, thence east on said line four and fifty-hundredths chains to the first point, containing fifteen (15) acres; also two and one-half (2½) acres in the southwest corner of the northeast quarter (¼) of the southwest quarter (¼) which lies south of the old tram-road; also the following tract: Commencing at the southwest corner of the northeast quarter (¼) of the southwest quarter (¼), thence running east along the south side of said forty-acre tract six hundred and twenty-four (624) feet, thence north fourteen degrees and twenty minutes (14° 20′) east magnetic bearing one hundred and thirty-four (134) feet, thence north twelve degrees east (12°) magnetic bearing four hundred and twenty-six (426) feet, thence south fifty-one degrees and thirty minutes (51° 30′) west one hundred and eighty-eight (188) feet, thence south seventy-eight degrees and fifteen minutes (78° 15′) west one hundred and thirty-four feet (134), thence parallel to the south line of forty-acre tract three hundred and ninety and four-tenths (390.4) feet to a point one hundred and twenty (120) feet east of the west line of the said forty-acre tract, thence north eight hundred and fifty-four and four-tenths (854.4) feet parallel to the west line of the said forty-acre tract to the north line of the said northeast quarter (¼) of the said southwest quarter (¼), thence west along said line one hundred and twenty (120) feet, thence south thirteen hundred and twenty (1320) feet
1107 to the first point; also the following tract: Commencing at the southwest corner of the southwest quarter (¼) of the northwest quarter (¼), thence easterly ninety-one and six-tenths (91.6) feet along south line of said quarter section; thence northerly parallel to west line of said quarter section about five hundred (500) feet to the centre of Mahan's creek; thence down said creek to west line of section nineteen (19); thence southerly four hundred and eighty (480) feet along said section line to point of beginning, all of the above tracts being in section nineteen (19); and the south half (½) of the northeast quarter (¼) and the west half of the southeast quarter (¼) of section twenty-nine (29), and the north half of the northwest quarter and the east half of the southeast quarter of the northwest quarter and the southeast quarter of the soutwest quarter and the southwest quarter of the southeast quarter and the west half of the northwestquarter of the northeast quarter; and the following-described tract: Commencing at the southeast corner of the northwest quarter of the northeast quarter, thence north four and one-half (4½) degrees west eleven and fifty-hundredths (11.50) chains; thence south eighty-five and one-half (85½) degrees west ten (10) chains; thence south four and one-half degrees (4½°) east eleven and fifty-hundredths (11.50) chains; thence north eighty-five

and one-half degrees (85½°) east ten (10) chains to first point;
1108 also a triangular piece commencing at the northwest corner of the above lot, thence north seven degrees (7°) east three and twenty-five hundredths chains; thence north seventy-seven (77°) degrees west sixty-five links to a point on north and south line, all of the above tracts being in section thirty (30); also the south half of the northeast quarter and the northeast quarter of the southeast quarter of section thirty-one (31); also the south half (½) of the northwest quarter (¼) and the northwest quarter of the northeast quarter and the south half (½) of the southwest quarter and the west half of the southeast quarter, section thirty-two (32).

And the following-described real estate situate in Shelby county, State of Alabama: The southwest quarter of the southeast quarter of section nineteen (19), township twenty-one (21) south, range two (2) west, and the southwest quarter of the northeast quarter of section thirty-five (35), township nineteen (19) south, range three (3) west, and the southwest quarter of the northwest quarter of section two (2), township twenty (20) south, range three (3) west, and the south half (½) of the southeast quarter of section six (6), township twenty-one (21) south, range three (3) west; and the following lands in township twenty-one (21) south, range three (3) west, namely: The northwest quarter and the southeast quarter of the northeast quarter and the northwest quarter of the southeast quarter and the southwest quarter of the southwest quarter of section seven (7), and the west half (½) of the northwest quarter of
1109 section eight (8), and the southeast quarter of the northwest quarter of section seventeen (17); and the undivided half interest in the following lands, namely: The southwest quarter of the northwest quarter and the north half (½) of the southwest quarter of section seventeen (17), and undivided half (½) of the north half (½) of the southeast quarter and the southeast quarter of the southeast quarter and the northeast quarter of the southwest quarter of section eighteen (18), and the entire interest in the north half (½) of the northwest quarter and the west half (½) of the southwest quarter and the northeast quarter of the northeast quarter and the southwest quarter of the southeast quarter, section eighteen (18), and the southeast quarter of the northeast quarter and the southeast quarter and the east half (½) of the southwest quarter of section nineteen (19), and the west half (½) and the west half of the southeast quarter and the northeast quarter of the southeast quarter and the west half of the northeast quarter and the southeast quarter of the northeast quarter of section twenty (20), and the southwest quarter of the northeast quarter and the northwest quarter of the southeast quarter of section twenty-three (23), and north half of the northwest quarter and the southwest quarter of the southwest quarter of section twenty-nine (29), and the north half of the northeast quarter and the east half of the southeast quarter and the southwest quarter
1110 of section thirty (30), and the northwest quarter and the northwest quarter of the southwest quarter and the east half of the east quarter of section thirty-one, and the northeast quarter of the northwest quarter of section thirty-two (32), and the following lands

in township twenty-two (22) south, range three (3) west, namely: The west half of the northwest quarter, section five (5), and the west half of the southeast quarter and the west half of the east half of the southeast quarter and the southwest quarter of the northeast quarter and the northwest quarter of section six (6), and the northwest quarter and the northwest quarter of the northeast quarter, section (7); and the following lands in township twenty-one (21) south, range four (4) west, namely: The east half of the northwest quarter and the east half of the southwest quarter and the southwest quarter of the southwest quarter and the southeast quarter of section three (3), and the northeast quarter of the northwest quarter and the southwest quarter of the southwest quarter of section six (6), and the north half of the northwest quarter and the southwest quarter of the northwest quarter and the southeast quarter of the northeast quarter of section seven (7), and the northwest quarter of the northwest quarter and the southeast quarter of the northwest quarter and the northeast quarter of the southwest quarter and the undivided one-third (⅓) interest in the south half of the southwest quarter of
1111 section ten (10), and the south half of the northeast quarter of section twelve (12), and the whole of section thirteen (13), and the undivided one-third (⅓) interest in the north half of the northwest quarter and the entire interest in the southwest quarter of the northwest quarter and the west half of the southwest quarter and the southeast quarter of the southwest quarter and the south half (½) of the southeast quarter and the northeast quarter of the southeast quarter and the east half of the northeast quarter of section fifteen (15), and the whole of section sixteen (16), and the west half of the southwest quarter and the west half of the southeast quarter and the southeast quarter of the southeast quarter of section seventeen (17), and the north half of the northwest quarter and the southwest quarter and the northwest quarter of the southeast quarter and the west half of the northeast quarter of section nineteen (19), and the undivided one-third (⅓) interest in the northwest quarter and the entire interest in the whole of northeast quarter of section twenty-two (22), and the southeast quarter of the northwest quarter and the northwest quarter of the southeast quarter of section twenty-four (24), and the undivided one-third (⅓) interest in the north half of the northwest quarter and in the southwest quarter of the northwest quarter and the entire interest in the whole of
1112 the southeast quarter of the west quarter of section twenty-eight (28), and the northwest quarter of the northwest quarter of section twenty-nine (29), and the west half of the northwest quarter of the southeast quarter of the northwest quarter and the southwest quarter and the south half of the southeast quarter and the northeast quarter of the southeast quarter and the south half of the northeast quarter and the undivided one-third (⅓) interest in the north half of the northeast quarter and the undivided one-third (⅓) interest in the northeast quarter of the northwest quarter of section thirty (30), and the southeast quarter of the northwest quarter and the southwest quarter of the southwest quarter and the northeast quarter of the southwest quarter of section thirty-one

(31), and the southeast quarter of section thirty-two (32), and the southwest quarter of the southwest quarter and the north half of the southeast quarter and the southeast quarter of the northeast quarter and the east half of the northwest quarter of section thirty-three (33), and the north half of the northeast quarter of section thirty-four (34), and the west half of the southwest quarter and the west half of the southeast quarter and the northeast quarter of the southeast quarter and the south half of the northeast quarter of section thirty-five (35), and the west half of the northwest quarter and the north half of the southwest quarter and the southeast quarter of the southwest quarter and the northeast quarter
1113 of section thirty-six (36); and the following real estate situate in township twenty-one (21) south, range five (5) west, namely: The west half of the northwest quarter and the east half of the southeast quarter and the southeast quarter of the northeast quarter of section one (1), and the northeast quarter and the west half of the southwest quarter of section two (2), and the northwest quarter of the southeast quarter and the northeast quarter of the northeast quarter of section twelve and the north half of the northeast quarter of section twenty-two (22), and the west half of southeast quarter of section twenty-three (23), and the north half of the southwest quarter and the southwest quarter of the southeast quarter of section twenty-four (24), and the west half of the southwest quarter and the southeast quarter of the northwest quarter of section twenty-five (25), and the east half of the southeast quarter of section twenty-six (26), and the northeast quarter of the northeast quarter of section thirty-five (35), and the northwest quarter of the northwest quarter and the east half of the northeast quarter and the northeast quarter of the southeast quarter and the undivided one-third ($\frac{1}{3}$) interest in the southwest quarter of the northwest quarter and in the north half of the southwest quarter and in the northwest quarter of the southeast quarter of section thirty-six (36); and following real estate situate in township twenty-two (22) south, range four (4) west, namely: The north half of the
1114 northwest quarter and the southeast quarter of the northwest quarter and the south half of section one (1), and the northwest quarter of the northeast quarter and the southeast quarter of the southeast quarter, section two (2), and the northeast quarter and the south half of the northwest quarter and the southwest quarter and the west half of the southeast quarter and the southeast quarter of the southeast quarter of section four (4), and the southwest quarter of the northeast quarter of section six (6), and the southeast quarter of the northeast quarter of section eight (8), and the east half of the northwest quarter and the west half of the northeast quarter of section nine (9), and the southeast quarter of the northwest quarter and the north half of the southwest quarter of section ten (10), and the north half of the northwest quarter and the north half of the southeast quarter of the northwest quarter and the east half of the southwest quarter and the southeast quarter and the south half of the northeast quarter and the northeast quarter of the northeast

quarter of section eleven (11), and the north half of the northwest quarter and the north half of the northeast quarter and the southeast quarter of the northeast quarter and the east half of the southeast quarter and the southwest quarter of the southeast quarter of section twelve (12), and the northwest quarter of the northeast quarter of section thirteen (13), and the west half of the southwest quarter of section fourteen (14),
1115 and the west half of the northeast quarter and the north half of the south half of section fifteen (15), and the northeast quarter and the south half of section sixteen (16), and the northwest quarter and the east half of section twenty (20), and the south half of section twenty-one (21), and the east half and the east half of the west half and the northwest quarter of the northwest quarter of section twenty-two (22), and the west half and the west half of the east half of section twenty-three (23), and the north half of the northwest quarter of fractional section twenty-six (26), and the north half of the northeast quarter of fractional section twenty-seven (27); and the following real estate situate in township twenty-four (24) north, range eleven (11) east, namely: The whole of section one (1), and the east half and the southwest quarter and the south half of the northwest quarter of section two (2), and the east half of the northwest quarter and the north half of the southwest quarter and the southeast quarter of the southwest quarter and the southeast quarter and the west half of the northeast quarter and the southeast quarter of the northeast quarter of section three (3), and the north half and the north half of the southwest quarter and the southeast quarter of section twelve (12), and the north half and the northeast quarter of the southwest quarter and the east half of the southeast quarter of section eleven (11), and the northeast quarter of section
1116 thirteen (13); and the following real estate situate in township twenty-four (24) north, range twelve east, namely: The west half of the west half and the east half of the southeast quarter of the southeast quarter and the northeast quarter of the southeast quarter of section six (6), and the west half of the southwest quarter of section five (5), and the west half of the northwest quarter and the southeast quarter of the northwest quarter and the northwest quarter of the southwest quarter and the southwest quarter of the northeast quarter and the undivided one-half interest in the southwest quarter of the southwest quarter of section seven (7), and the northwest quarter of the northwest quarter and the east half of the southeast quarter of section eighteen (18), and the northwest quarter of the southwest quarter and the east half of the southwest quarter of the southwest quarter of section seventeen (17), and the south half of the northeast quarter and the northeast quarter of the northeast quarter of section twenty (20), and the northwest quarter of the southwest quarter of section ten (10), and the southeast quarter and the south half of the southwest quarter and that portion of the northwest quarter of the southwest quarter which lies south of the Centreville and Montevallo dirt road, all in section nine (9), and the southeast quarter of the southeast quarter and all that por-
1117 tion of the entire southeast quarter of section eight (8) which lies

south of the Centreville and Montevallo dirt road; and the mineral interest in and the mining rights to the following tracts of land, namely: The east half of the northwest quarter of section seventeen (17), and the southwest quarter of section twenty-five (25), and the south half of the southeast quarter of section twenty-six (26), and the northeast quarter of the northeast quarter of section thirty-five (35), and the northeast quarter of the northwest quarter of section thirty-six (36), all of the above tracts being in township twenty-one (21) south, range four (4) west, and the southwest quarter of section two (2), and the northeast quarter of the southeast quarter of section three (3), both of the above tracts being in township twenty-two (22) south, range four (4) west, and the entire interest in the southeast quarter of the southeast quarter of section thirty-two (32), township twenty (20) south, range three (3) west.

And the following-described real estate situate in Chilton county, State of Alabama, namely: The northwest quarter of section twenty-one (21), and the north half of the northwest quarter of section sixteen (16), and the north half of the northwest quarter of section twenty-eight (28), and the west half of the southwest quarter of section fourteen (14), and the west half of the east half of the southwest quarter of section fourteen (14), all of the above-
1118 described land being in township twenty-four (24) north, range twelve (12) east; and the west half of the northeast quarter and the northwest quarter and the northeast quarter and the west half of the southwest quarter and the northwest quarter of the southeast quarter, all in section thirty (30), township twenty-four (24) north, range thirteen (13) east; and the west half of the southeast quarter and the southwest quarter of the northeast quarter, and five acres off east half of the southeast quarter, commencing at the ford of Dry creek and running along the Montgomery road fifty (50) rods south, thence due south, leaving grave-yard on west side of line, and situated in section nineteen (19), township twenty-four (24) north, range thirteen (13) east; also the northeast quarter of the northeast quarter of section twenty-six (26), township twenty-four (24) north, range twelve (12) east; also the north half of fractional B, township twenty-four (24) north, range twelve (12) east, except seventeen (17) acres of the northwest corner and four acres for the Concord church; also the north half of fractional section twenty-five (25), township twenty-four (24) north, range twelve (12) east, except four acres off the northeast corner; also the northeast quarter and the south half of the southwest quarter of section eighteen (18), township twenty-four (24) north, range thirteen east; also all the
1119 mineral and mining rights on the south half of fraction B of section thirteen (13), and the southeast quarter of the southeast quarter of section fourteen (14), and the northeast quarter of the northeast quarter of section twenty-three (23), and the northwest quarter of the southeast quarter of the northeast quarter of section twenty-three (23), all in township twenty-four (24) north, range (12) east, and the northwest quarter of the southeast quarter of section eighteen (18), township twenty-four (24) north,

range thirteen (13) east, and all the mineral and mining rights on the whole of section fifteen (15), township twenty-four (24) north, range twelve (12) east, except the northwest quarter of the northwest quarter; also the mineral and mining rights on the following-described lands in township twenty-four (24) north, range twelve (12) east, namely: The northwest quarter of the northeast quarter and the southeast quarter of the southeast quarter of section sixteen (16), and the north half of section twenty-two (22), and the northeast quarter of section twenty-one (21), and the west half of the southwest quarter of section twenty-one (21).

And also the following-described personal property of the — of the first part in the county of Bibb, State of Alabama, used and employed in and about the iron-ore banks, ore-washer, stock sheds, blast furnace, store, office, stock yard, blacksmith shops, carpenter
1120 shops, coking ovens, coal-washers, railways, rolling mill, nail factory, cooper shop, pattern shops, machine shop, foundry, storehouse, offices, houses, and other places owned or controlled by the party of the first part in part described as follows: Two locomotives, fifty railroad cars for coal, coke, and ore, forty ore cars, one hundred barrows, two hundred picks, forty drills, forty hammers, twenty mules and harness, four wagons, six sets of blacksmith tools, rolling mill, nail factory, machine shop, foundry and pattern shop tools, two hundred shovels, ten carts, six sets of ropes and sheave blocks, office furniture and safes, goods in store at furnace and Brierfield, and all the limestone, brick, ore, coke, coal, pig-iron, muck bar, nail plate, merchant bar, nails, kegs, castings, railroad iron, spikes, and track tools, wherever situate.

And also the following personal property in the county of Shelby, State of Alabama, employed in and about the coal mines and quarries of the party of the first part, namely: One hundred and fifty mine cars, eight mules and harness, two wagons, one hundred shovels, one hundred picks, fifty drills, one hundred hammers, four hundred kegs of powder, three boxes of dynamite, wire and hemp ropes, sheave wheels, oil lamps, car wheels and axles, and irons, cross-ties, railroad iron, timber, lumber and props, two sets blacksmith's tools and iron in blacksmith shops, scales, shelves, counters, and
1121 stock of goods in store, and the property, real or personal, acquired and owned by said trustees for the benefit of said Brierfield Coal and Iron Coupany up to the date of this decree.

And said trustee, W. L. Chambers, shall turn over said property to said commissioner for sale and shall provide him with an inventory of the same for that purpose, and in the advertisement of such sale the commissioner shall give a general description of the property to be sold and shall have present at the time of the sale printed inventories, accessible to persons who may desire to bid for the same.

It is further ordered, adjudged, and decreed that said property shall not be sold for a less bid than two hundred thousand dollars ($200,000.00), of which sum the purchaser shall pay fifty thousand dollars ($50,000.00) to the commissioner on the day of sale, in lawful money or in a check or checks, certified by a solvent national

bank, in the city of Montgomery, Alabama, and shall receive from said commissioner a certificate of such purchase and payment; and said purchaser shall pay, in like manner, the sum of fifty thousand dollars ($50,000) in such installments and at such times as the court shall order and direct after the lapse of thirty (30) days from the date of said sale.

And all of said money shall be subject to the orders of the
1122 court in this cause. When the decree of this court is rendered confirming said sale of said property the remainder of the sum due on the bid of the purchaser shall be paid to said commissioner, and thereupon the court will order a conveyance of said property to be made to said purchaser.

In any of the payments to be made of the purchase-money bid for said property the certificates issued by the trustees under the orders of this court and the indebtedness created against said property by the orders of this court and the interest accrued on such certificates and indebtedness up to the date of such payment, as the sums are stated in the report of the special master herein confirmed, may be used as lawful money by the owner of such indebtedness, his assigns or lawful attorney.

And in like manner the receipt of any person to whom this court shall have made an allowance in this cause for fees or commissions charged upon the funds to be brought into this court under this decree for the sum so decreed to such person may be used in the place of an equal sum of money in paying such bid for said property or any installment thereof.

The order of the application and payment of any money that shall come into this court under this decree shall be as follows:

1123 First. The costs of this suit, including all fees and allowances made by the order of the court to the officers and agents of the court, and the attorneys and counsel of the trustees.

Second. The debts contracted by the trustees under the orders of this court, and stated in the report of the special master in this cause.

Third. The sum found to be due on the report of the special master to Mrs. Lillian A. Carter.

Fourth. The residue of the funds that shall come into this court under this decree after the application of said funds to the full discharge of the purposes and objects hereinabove designated, and to any other special purposes or subject that this court shall by its order and further decree *or* direct, shall be applied rateably and without discriminatiou to the bonds and coupons that are held and owned by the several persons who are named in the report of the special master made in this cause, so that each of said holders of said bonds and coupons shall receive the same rateable share of said fund — proportion to the amount due to said persons respectively, as stated in said report.

And to the sum of money that is so found due and owing by Mrs. Carrie S. Plumb to the Brierfield Coal and Iron Company, being

thirty-eight thousand two hundred and seventy-eight dollars
1124 and forty-two cents ($38,278.42), the *pro rata* share of Mrs. Carrie S. Plumb, so payable on the thirty-two (32) registered bonds and coupons of said company held and owned by her (but filed in court by Thomas S. Krutz), shall be applied to her said debt to said company until the same is fully paid; and so in like manner any dividend of said funds for distribution in accordance with this fourth classification that shall become due to Justin S. Morrill or to Samuel Thomas or to George I. Seney or to Calvin S. Brice shall be applied to the payment of the several sums of money which are ascertained by the report of the special master in this cause to be due and owing from said persons respectively on their subscriptions to the stock of the Brierfield Coal and Iron Company until the same are fully paid.

It is further ordered, adjudged, and decreed that any sum of money that may be due to the owner of any bonds or coupons of said Brierfield Coal and Iron Company, as stated in the report of the special master, and not required herein to be paid to the debts due for stock subscriptions to said company, may be used and applied to the residue of the purchase-money of the property of said company sold under this decree upon the written order of such owner.

It is ordered, adjudged, and decreed that C. C. Huckabee pay into court a sum of fourteen thousand six hundred and twenty-
1125 one dollars and fifty-two cents ($14,621.52), ascertained by said report to be due and owing by him to the Brierfield Coal and Iron Company, within sixty days from the date of this decree, and in default of such payment execution may issue thereon, to be levied of his goods and chattels, lands and tenements.

It is further ordered, adjudged, and decreed by the court that after all the debts, charges, costs, and expenses in this decree mentioned are fully satisfied, then the debt ascertained in the report of the master to be due to Thomas J. Peter for the sum of three thousand six hundred and fifty-one dollars and thirty-two cents ($3,651.32) shall be paid out of any funds that comes into the court under this decree.

It is further ordered, adjudged, and decreed that the special master of this court shall make deeds of conveyance to each of the persons, corporations, and societies mentioned in his report as having purchased or acquired lots in the village of Brierfield from the Brierfield Coal and Iron Company, and who are therein found to be justly and equitably entitled to such conveyances, upon the tender by such grantees of deeds for his signature in proper form and without any covenants of warranty of title or possession.

It is referred to the special master in this cause to ascertain and report as early as practicable what is a just allowance to Pres-
1126 ton B. Plumb, and also to W. L. Chambers, for their services as trustees in the control and management of the trust estate placed in their charge, and also what is a just allowance to the counsel and attorneys of the trustees for their services as attorneys and solicitors rendered in behalf of said trust estate in this court and in the courts of Bibb county, Alabama, and for the preparation of any

conveyances of the property of said company to Preston B. Plumb, trustee.

And all other matters not herein decided, and all further orders, directions, and decrees touching any matter that may hereafter require the action of the court are reserved.

JOHN BRUCE, *Judge.*

July 8, 1889.

Filed the 8th day of July, A. D. 1889.

J. W. DIMMICK, *Clerk.*

(Folios 1127 to 1170 are Stock Certficates, with their endorsements.)

1127

The Original Stock Certificate book of the B.C. & I. Co. shown & and including No. 45 & stubs of certificate of No. 240

$15000.00/100

Certificate No. [redacted] 1

150 Shares Issued to

Esther A. Peter

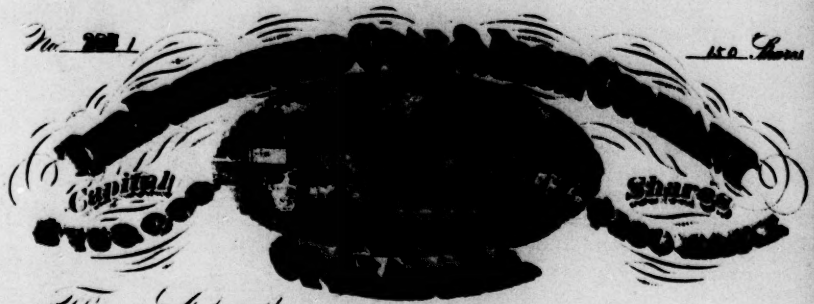
Date October 9th 1882

Received the above described Certificate in lieu of Certificate No. _____

for _____ Shares

Issued to Esther A. Peter by F. J. Peter

No. [redacted] 1 150 Shares



This is to Certify that Esther A. Peter is the owner of One Hundred and Fifty full paid Shares of One Hundred Dollars each in the Capital Stock of The Brierfield Coal & Iron Company of Ala. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By-Laws of said Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

Brierfield, Ala. October 9 1882

John G. Murray, Secretary — F. J. Peter, President.

For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer reqnired by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

ESTHER A. PETER.

Sealed and delivered in presence of—

T. J. PETER.

1129

$2000 00

Certificate No. [illegible] 2

Twenty Shares. Issued to

P. J. Peter, Trustee for Edward P. Peter

Date October 9th 1882

Received the above described Certificate in lieu of Certificate No. _____

for _____ Shares

Issued to _____

P. J. Peter Trustee for
Edward P. Peter

No. [illegible] 2 — 20 Shares

This is to Certify that P. J. Peter Trustee for Edward P. Peter is the owner of Twenty full paid Shares of One Hundred Dollars each in the Capital Stock of The Brierfield Coal & Iron Company of Ala. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By-Laws of said Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

Brierfield, Ala. October 9th 1882

John G. Murray, Secretary — P. J. Peter, President.

1130 *Back of Certificate No. 2.*

For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer reqnired by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

T. J. PETER,
Trustee.

Sealed and delivered in presence of—
EDW. T. PETER.

1131

$ 2000.00

Certificate No 203

Twenty Shares. Issued to

P. J. Peter, Trustee for Florence J. Peter

Date. October 9" 1892

Received the above described Certificate in lieu

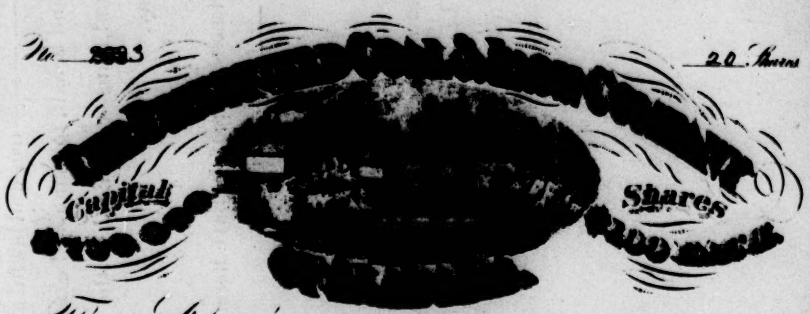
of Certificate No. _____

for _____ Shares

Issued to _____

P. J. Peter, Trustee for Florence J. Peter

No. 203 20 Shares



This is to Certify that P. J. Peter, Trustee for Florence J. Peter

is the owner of Twenty full paid Shares of

One Hundred Dollars each in the Capital Stock of THE BRIERFIELD COAL & IRON COMPANY OF ALA. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By Laws of said Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

BRIERFIELD, ALA. October 9" 1892

_____ Secretary

_____ President.

For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

T. J. PETER,
Trustee.

Sealed and delivered in presence of—
EDW. T. PETER.

1135

Issued

Certificate No. [illegible]5

Twenty Shares Issued to

[illegible] Esther Peter

Date October 2 1882

Received the above described Certificate in lieu

of Certificate No. _____

for _____ Shares

Issued to [illegible]

Blanche Esther Peter

No. [illegible]5

[illegible]

This is to Certify that [illegible] Esther Peter

is the owner of Twenty full paid Shares of

One Hundred Dollars each in the Capital Stock of The [illegible] Coal & Iron Company of Ala. transferable only on the

Books of the Corporation in person or by Attorney in accordance with the By-Laws of said

Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures

of the President and Secretary are hereunto affixed.

[illegible], Ala. October 2 1882

[illegible] Secy. [illegible] President.

For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

T. J. PETER,
Trustee.

Sealed and delivered in presence of—
EDW. T. PETER.

1137

$ 17000 00/100

Certificate No. ~~[illegible]~~ 6

One Hundred Seventy (170) Shares Issued to

P. J. Peter

Date October 9th 1882

Received the above described Certificate in lieu

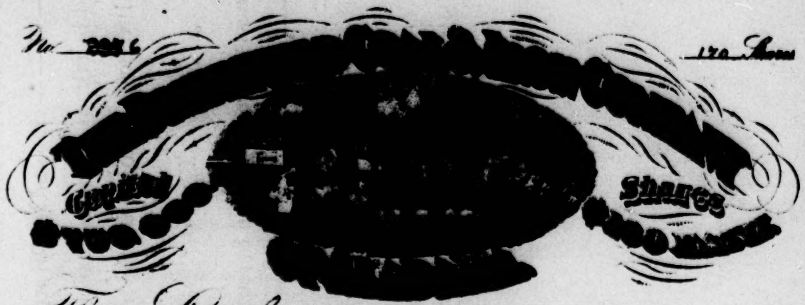
of Certificate No.

for Shares

Issued to

P. J. Peter

No. ~~[illegible]~~ 6 170 Shares



This is to Certify that P. J. Peter, Esq.

is the owner of One Hundred and Seventy full paid Shares of One Hundred Dollars each in the Capital Stock of The Brierfield Coal & Iron Company of Ala. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By Laws of said Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

Brierfield, Ala. October 9th 1882

John G. Murray Secretary P. J. Peter President

For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer reqnired by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

T. J. PETER,

Sealed and delivered in presence of—
EDW. T. PETER.

1139

$5000.00

Certificate No. 2357

Fifty (50) Shares. Issued to

Justin S. Morrill

Date. October 9th 1882

Received the above described Certificate in lieu

of Certificate. No.

for Shares

Issued to

$15000.00

Certificate No. 2358

One Hundred Fifty Shares. Issued to

C. L. Plumb

Date. October 9th 1882

Received the above described Certificate in lieu

of Certificate. No.

for Shares

Issued to

$10000.00

Certificate No. 2359

One Hundred Shares. Issued to

H. O. Beebe

Date. Nov 13th 1882

Received the above described Certificate in lieu

of Certificate. No.

for Shares

Issued to

$10,000.00

Certificate No 888 10

One Hundred Shares Issued to

A. O. Beebe

Date Nov 13th 1882

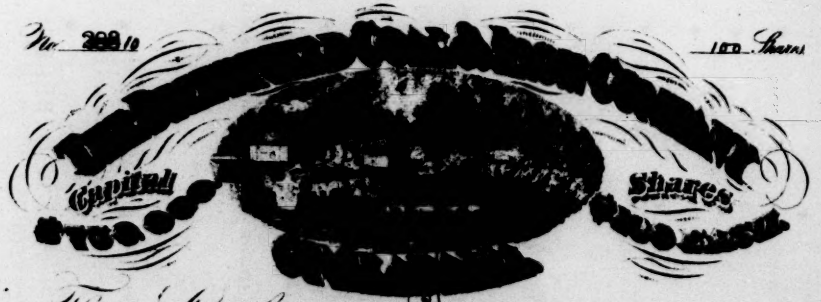
Received the above described Certificate in lieu of Certificate No

for Shares

Issued to

This Certificate returned and cert #26 for 30 shares " " " 27 " 70 " issued instead

No 888 10 100 Shares



This is to Certify that A. O. Beebe, Esq is the owner of One Hundred ~~Dollars~~ full paid Shares of One Hundred Dollars each in the Capital Stock of The Birmingham Coal & Iron Company of Ala. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By Laws of said Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

Birmingham, Ala. November 13th 1882

John G. Murray Secretary

[redacted] President.

1141 *Back of Certificate No.* 10.

For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

A. O. BEEBE.

Sealed and delivered in presence of—
L. M. SCHWAN.

1141½ $10,000.00.

Certificate No. 11.

One hundred shares issued to A. O. Beebe.

Date, November 13th, 1882.

Received the above-described certificate, in lieu of certificate No. —, for — shares, issued to —— ——.

$15.000.

Certificate No. 12.

One hundred and fifty shares, issued to C. S. Plumb.

Date, Nov. 13th, 1882.

Received the above-described certificate, in lieu of certificate No. —, for — shares, issued to —— ——.

1142

$5000.00

Certificate No. ~~200~~ 13

Fifty Shares Issued to

Justice L. Morrill

Date, Dec 12-- 1882

Received the above described Certificate in lieu of Certificate No. _____

for _____ Shares

Issued to _____

This Certificate returned April 9th and Certificate No 15 issued for forty Nine Shares instead.

No. 13 ~~200~~ Fifty Shares

Capital Shares

This is to Certify that Justice L. Morrill, Esq is the owner of Fifty full paid Shares of One Hundred Dollars each in the Capital Stock of the BIRMINGHAM COAL & IRON COMPANY OF ALA. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By-Laws of said Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

BIRMINGHAM, ALA. Dec 12-- 1882

John G. Murray Secretary _____ President.

For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer reqnired by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

———

Sealed and delivered in presence of—

———

1144

$ 15000.

Certificate No. ~~[illegible]~~ 14

One Hundred fifty Shares Issued to

A. W. Reeba

Date April 2 1883

Received the above described Certificate in lieu

of Certificate No.

for Shares

Issued to

Sacco

Certificate No. ~~[illegible]~~ 15

Forty Nine Shares Issued to

Justin S. Morrill

Date April 2 1883

Received the above described Certificate in lieu

of Certificate No. 13

for Shares

Issued to

1145

$25000.00

Certificate No. [illegible] 16

Three Hundred fifty Shares Issued to

Esther A. Peter

Date April 13" 1883

Received the above described Certificate in lieu

of Certificate No.

for Shares

Issued to

T. J. Peter

No. [illegible] 350 Shares

This is to Certify that Esther A. Peter

is the owner of Three Hundred & fifty full paid Shares of One Hundred Dollars each in the Capital Stock of The Brierfield Coal & Iron Company of Ala. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By Laws of said Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

Brierfield, Ala. April 13" 1883

John J. Murray Secretary T. J. Peter President.

For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

ESTHER A. PETER.

Sealed and delivered in presence of—

T. J. PETER,

No. 17 — 30 Shares

$3000.00

Certificate No. 17

Thirty Shares Issued to

P. J. Peter, Trustee for Ed. P. Peter

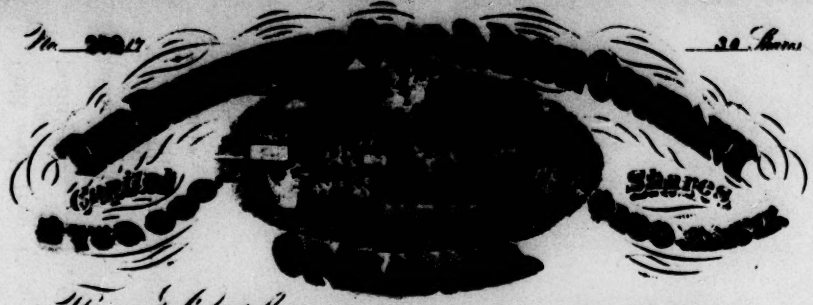
Date April 13 1883

Received the above described Certificate in lieu of Certificate No. _____

for _____ Shares

Issued to _____

P. J. Peter



This is to Certify that P. J. Peter, Trustee for Edw. P. Peter is the owner of Thirty full paid Shares of One Hundred Dollars each in the Capital Stock of The Birmingfield Coal & Iron Company of Ala. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By Laws of said Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

Birmingfield, Ala. April 13 1883

[illegible] Secretary — P. J. Peter President

1147

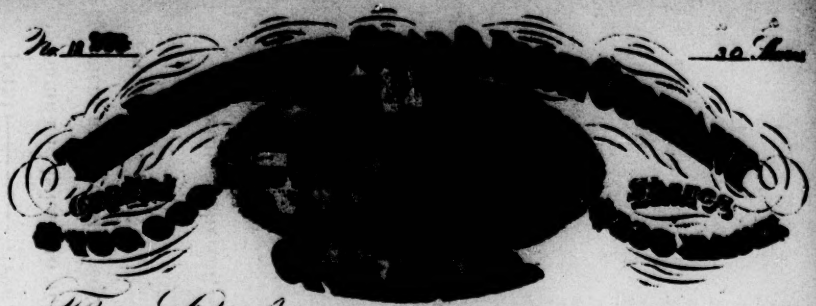
For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

T. J. PETER,
Trustee.

Sealed and delivered in presence of—
EDW. T. PETER.

No. 18 [illegible] 30 Shares



This is to Certify that P. J. Peter, Trustee for Florence J. Peter is the owner of Thirty full paid Shares of One Hundred Dollars each in the Capital Stock of The Brierfield Coal & Iron Company of Ala. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By Laws of said Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

Brierfield, Ala. April 13" 1883

John L. Murray, Secretary — P. J. Peter, President.

$3000.

Certificate No. [illegible] 18

Thirty Shares Issued to

P. J. Peter, Trustee for Florence J. Peter

Date April 13" 1883

Received the above described Certificate in lieu of Certificate No. _____

for _____ Shares

Issued to _____

P. J. Peter

1149

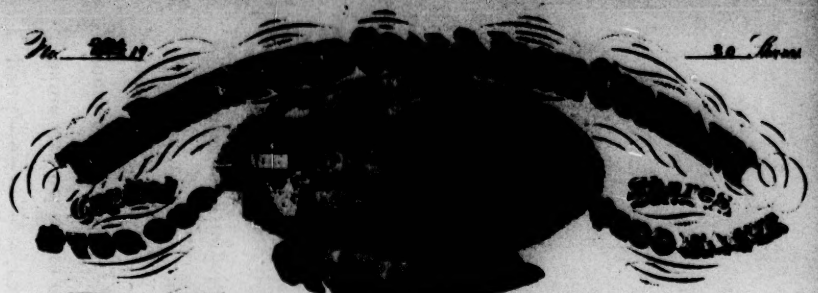
For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

T. J. PETER,
Trustee.

Sealed and delivered in presence of—
EDW. T. PETER.

No. [illegible] 19 — 30 Shares



This is to Certify that T. J. Peter, Trustee for Geo. F. Peter is the owner of Thirty fill paid Shares of One Hundred Dollars each in the Capital Stock of The Brierfield Coal & Iron Company of Ala. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By-Laws of said Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

Brierfield, Ala. April 13" [illegible]

John G. Murray — T. J. Peter

$3000.

Certificate No. [illegible] 19

Thirty Shares Issued to

T. J. Peter, Trustee for Geo. F. Peter

Date April 13" 1883

Received the above described Certificate in lieu of Certificate No. _____

for _____ Shares

Issued to _____

T. J. Peter

XXXV

For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

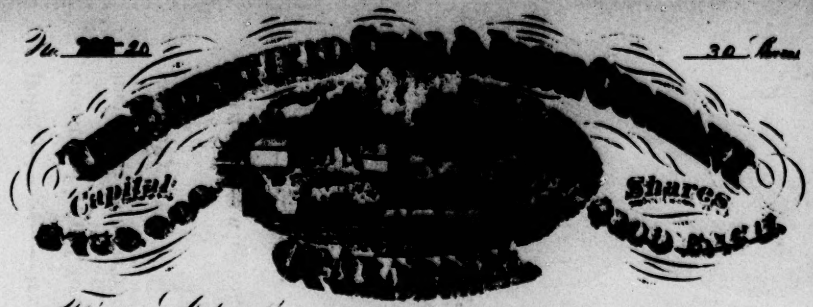
T. J. PETER,
Trustee.

Sealed and delivered in presence of—
EDW. T. PETER.

No. [redacted] 20 — 30 Shares

[illegible]

Capital $100,000 — Shares $3000 Each



This is to Certify that T. J. Peter, Trustee for Blanche E. Peter is the owner of Thirty full paid Shares of One Hundred Dollars each in the Capital Stock of The Brierfield Coal & Iron Company of Ala. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By-Laws of said Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signature of the President and Secretary are hereunto affixed.

Brierfield, Ala. April 13th 1883

John G. Murray — T. J. Peter, President.

$3000.

Certificate No. [redacted] 20

Thirty Shares Issued to

T. J. Peter, Trustee for Blanche E. Peter

Date April 13th 1883

Received the above described Certificate in lieu of Certificate No. _____

for _____ Shares

Issued to _____

T. J. Peter

115-3

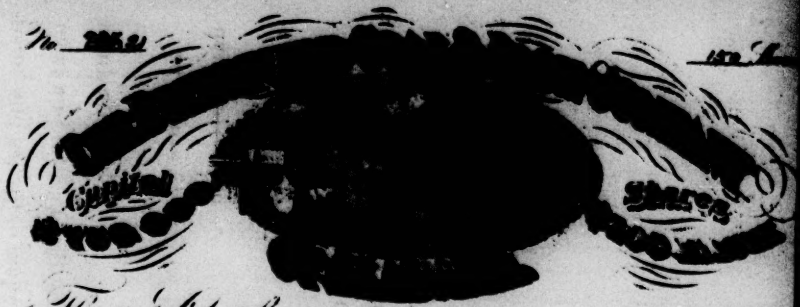
For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint ——— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

T. J. PETER,
Trustee.

Sealed and delivered in presence of—
EDW. T. PETER.

No. [illegible] 21 150 [illegible]



This is to Certify that P. J. Peter, Esq
is the owner of One Hundred fifty full paid Shares of
One Hundred Dollars each in the Capital Stock of The Brierfield Coal & Iron Company of Ala. transferable only on the
Books of the Corporation in person or by Attorney in accordance with the [illegible] Laws of said
Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures
of the President and Secretary are hereunto affixed.

Brierfield, Ala. April 13" 1883

John F. [illegible] Secretary P. J. Peter President.

$15000.00

Certificate No. [illegible] 21

One Hundred fifty Shares Issued to

Date April 13" 1883

Received the above described Certificate in lieu
of Certificate No.

for Shares

Issued to P. J. Peter

P. J. Peter

1155

For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

T. J. PETER.

Sealed and delivered in presence of—
EDW. T. PETER.

1157

$ 30000

Certificate No ~~[illegible]~~ 22

Three Hundred Shares Issued to

Mrs. C. S. Plumb

Date April 13th 1883

Received the above described Certificate in lieu

of Certificate No

for Shares

Issued to

$ 15000.00

Certificate No ~~[illegible]~~ 23

150 Shares Issued to

A. D. Beebe

Date June 7th 1883

Received the above described Certificate in lieu

of Certificate No

for Shares

Issued to

$ 28800

Certificate No ~~[illegible]~~ 24

two hundred ~~[illegible]~~ Eighty Eight Shares Issued to

C. S. Plumb

Date July 23 1883

Received the above described Certificate in lieu

of Certificate No

for Shares

Issued to

1158

$23300

Certificate No 20025

Two hundred thirty three Shares Issued to

A. O. Beebe

Date July 23 1883

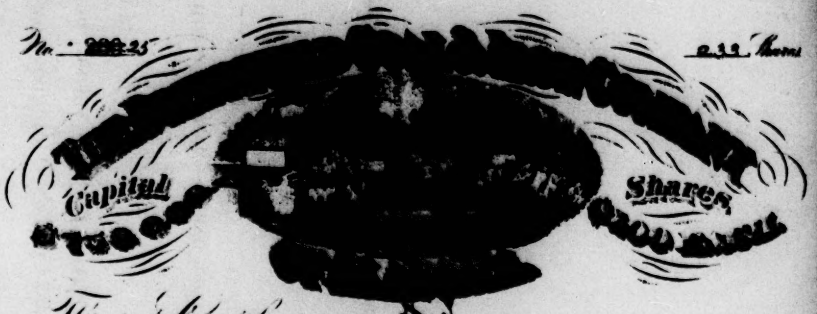
Received the above described Certificate in lieu

of Certificate No.

for Shares

Issued to

No. 20025 233 Shares



This is to Certify that A. O. Beebe, Esq

is the owner of Two Hundred & Thirty three fully paid Shares of

One Hundred Dollars each in the Capital Stock of The Birmingham Coal & Iron Company of Ala. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By Laws of said Corporation and on the surrender of this Certificate

In Witness Whereof the Seal of the Corporation and the Signatures of the President and Secretary are hereunto affixed.

Birmingham Ala. July 23rd 1883

John G. Murray Secretary

R. J. Peter President.

R. J. Peter

For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

A. O. BEEBE.

Sealed and delivered in presence of—

———

1160 $3,000.00.

Certificate No. 26.

Thirty shares, issued to —— ——.

Date, Aug. 23, 1883.

Received the above-described certificate, in lieu of certificate No. —, for — shares, issued to —— ——.

$7,000.

Certificate No. 27.

Seventy shares, issued to A. O. Beebe.

Date, Aug. 22, 1883.

Received the above-described certificate, in lieu of certificate No. —, for — shares, issued to —— ——.

$1,100.00.

Certificate No. 28.

Eleven shares, issued to Justin S. Morrill.

Date, Oct. 29, 1883.

Received the above-described certificate, in lieu of certificate No. —, for — shares, issued to —— ——.

1161 $3,200.00.

Certificate No. 29.

Thirty-two shares, issued to C. S. Plumb.

Date, Nov. 12th, 1883.

Received the above-described certificate, in lieu of certificate No. —, for — shares, issued to —— ——.

1162

$129.000

Certificate No 30

Twelve Hundred Ninety Shares Issued to

T. J. Peters

Date Nov 23 1883

Received the above described Certificate in lieu

of Certificate No

for Shares

Issued to

No. 30 1290 Shares

This is to Certify that T. J. Peters, Esq.

is the owner of Twelve Hundred & Ninety full paid Shares of One Hundred Dollars each in the Capital Stock of THE BRIERFIELD COAL & IRON COMPANY OF ALA. transferable only on the Books of the Corporation, on personal or by Attorney in accordance with the By-Laws of said Corporation, and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

BRIERFIELD, ALA. Nov. 23rd 1883

John G. Murray Secretary

President

For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

T. J. PETER.

Sealed and delivered in presence of—
EDW. T. PETER.

No. [redacted]31 — 10 Shares

This is to Certify that John G. Murray

is the owner of Ten full paid Shares of One Hundred Dollars each in the Capital Stock of The Brierfield Coal & Iron Company of Ala. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By Laws of said Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

Brierfield, Ala. Nov 23" 1883

John G. Murray, Secretary — R. J. Peter, President.

$1000.00

Certificate No. [redacted]31

ten Shares Issued to

John G. Murray

Date Nov 23" 1883

Received the above described Certificate on loss of Certificate No.

for Shares

Issued to

For value received, I, the undersigned, hereby assign and transfers unto The Brierfield Coal and Iron Company, four shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint ——— ——— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, — have hereunto set my hand and seal this 29th day of July, 1887.

JOHN G. MURRAY.

Sealed and delivered in presence of—

———

1166

$ [illegible]

Certificate No. [illegible] 32

Four Hundred Eighty Shares Issued to

P. J. Peter

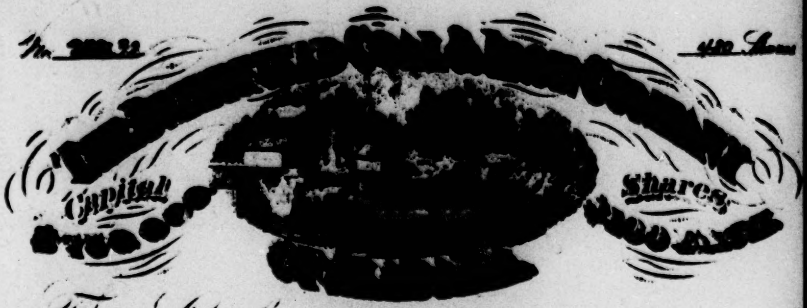
Date March 12th 1884

Received the above described Certificate in lieu

of Certificate No.

for Shares

Issued to



No. [illegible] 32 480 Shares

[illegible]

Capital Shares

[illegible]

This is to Certify that P. J. Peter, Esq.

is the owner of Four Hundred and Eighty # full paid Shares of One Hundred Dollars each in the Capital Stock of The Brierfield [illegible] Company of Ala. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By-Laws of said Corporation and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

Brierfield, Ala. March 12th 1884

[illegible] [illegible]

1167 *Back of Certificate No.* 32.

For value received, —, the undersigned, hereby assign and transfers unto —— —— — shares of the capital stock of The Brierfield Coal and Iron Company, and — do hereby constitute and appoint —— —— — true and lawful attorney, irrevocable, for and in — name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, — have hereunto set — hand and seal this — day of ——, 188 .

T. J. PETER.

Sealed and delivered in presence of—
EDW. T. PETER.

1168

$ 6000.

Certificate No 33

Sixty Shares. Issued to

C. S. Plumb.

Date. May 5th 1884

Received the above described Certificate in Lieu

of Certificate. No

for Shares

Issued to

$ 1000 00

Certificate No 34

C. S. Plumb Shares. Issued to

Date. May 12th 1884

Received the above described Certificate in Lieu

of Certificate. No

for Shares

Issued to

$ 100 00

Certificate No 35

One Share. Issued to

N. J. Peter

Date. October 1884

Received the above described Certificate in Lieu

part of

of Certificate. No 1

for 150 Shares

Issued to Esther A. Peter

N. J. Peter

$ 285,000 00

Certificate No. [illegible] 36

Twenty Eight Hundred & fifty nine Shares Issued to

T. J. Peter, Trustee

Date Oct 28" 1884

Received the above described Certificate in lieu of cash & of Certificate No. 16, 1, 8, 5, 4, 3, 2, 18, 17, 21, 19, 20, 30, 32

for 2789 Shares

Issued to E. A. Peter, T. J. Peter & T. J. Peter, Trustee

T. J. Peter Trustee

No. [illegible] [illegible] Shares

This is to Certify that T. J. Peter, Trustee is the owner of Twenty Eight Hundred & fifty Nine full paid Shares of One Hundred Dollars each in the Capital Stock of The Springfield Coal & Iron Company of Ala. transferable only on the Books of the Corporation in person or by Attorney in accordance with the By Laws of said Corporation, and on the surrender of this Certificate.

In Witness Whereof the Seal of the Corporation and the signatures of the President and Secretary are hereunto affixed.

Springfield, Ala. Oct 28" 1884

John G. Murray, Secretary — T. J. Peter, President.

1169

This stock is held by me as trustee for Esther A. Peter, whose money paid for it.

T. J. PETER.

For value received, I, the undersigned, hereby assign and transfer unto Charles L. Bates, one share; to Edward T. Peter and to Edward T. Peter, trustee for Esther A. Peter, 697 shares; and to Esther A. Peter, five hundred shares; and to Laura E. Williams, five hundred shares; and to The Brierfield Coal and Iron Company, 1160 shares *shares* of the capital stock of The Brierfield Coal and Iron Company, and I do hereby constitute and appoint John G. Murray — true and lawful attorney, irrevocable, for and in my name and behalf, to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said company.

In witness whereof, I have hereunto set my hand and seal this 12th day of January, 1887.

T. J. PETER,
Trustee.

Sealed and delivered in presence of—

JOHN G. MURRAY.

1171 $13,000.00.

Certificate No. 37.

Two hundred and thirty shares, issued to S. O. Beebe.

Date, Jan'y 12th, 1885.

Received the above-described certificate, in lieu of certificate No. 25, for 233 shares, issued to A. O. Beebe—3 shares issued in error.

$100.00.

Certificate No. 38.

One share, issued to C. L. Bates.

Date, Jan'y 12th, 1887.

Received the above-described certificate, in lieu of certificate No. —, for — shares, issued to —— ——.

$100.00.

Certificate No. 39.

One share, issued to Edward T. Peter.

Date, Jan'y 12th, 1887.

Received the above-described certificate, in lieu of certificate No. —, for — shares, issued to —— ——.

1172 $69.700.00.

Certificate No. 40.

697 shares, issued to Edw. T. Peter, trustee for Esther A. Peter.

Date, Jan'y 12th, 1887.

Received the above-described certificate, in lieu of certificate No. 36, for 2,859 shares, of which 1,160 shares were returned to the company by order of board of directors, issued to T. J. Peter, trustee.

EDW. T. PETER,
Trustee for E. A. Peter.

$50,000.00.

Certificate No. 41.

Five hundred shares, issued to Esther A. Peter.

Date, July 29th, 1887.

Received the above-described certificate, in part lieu of certificate No. 36, for 2,859 shares, issued to T. J. Peter, trustee.

E. A. PETER.

$50,000.00.

Certificate No. 42.

Five hundred shares, issued to Laura E. Williams.

Date, July 29, 1887.

Received the above-described certificate, in part lieu of certificate No. 36, for 2,859 shares, issued to T. J. Peter, trustee.

L. E. WILLIAMS.

1173 $600.00.

Certificate No. 43.

Six shares, issued to John G. Murray.

Date, July 29th, 1887.

Received the above-described certificate, in lieu of certificate No. 31, for ten shares, of which 4 shares were returned to the company by order of the board of directors, issued to John G. Murray.

JOHN G. MURRAY.

$———.

Certificate No. 240.

—— shares, issued to —— ——.

Date, —— —, 188—.

Received the above-described certificate, in lieu of certificate No. —, for — shares, issued to —— ——.

Chap. 108, Rev. Stat. Wisconsin, 1878.

1174 *Chapter CVIII of the Property Rights of Married Women.*

Real estate of married women their sole property.

SECTION 2340. The real estate of every description, including all held in joint tenancy with her husband, and the rents, issues, and profits thereof of any female now married shall not be subject to the disposal of her husband, but shall be her sole and separate property as if she were — married.

Real and personal estate their sole property.

SECTION 2341. The real and personal property of any female who may hereafter marry, and which she shall own at the time of marriage, and the rents, issues, and profits thereof shall not be subject to the disposal of her husband nor be liable for his debts, and shall continue her sole and separate property.

May receive, hold, and convey property.

SECTION 2342. Any married female may receive by inheritance or by gift, grant, devise, or bequest from any person other than her husband and hold to her sole and separate use, and convey and devise, real and personal property, and any interest or estate therein of any description, including all held in joint tenancy with her husband, and the rents, issues, and profits, in the same manner and with like effect as if she were unmarried, and the same shall not be subject to the disposal of her husband nor be liable for his debts.

Individual earnings of married women.

1175 SECTION 2343. The individual earnings of every married woman, except those accruing from labor performed for her husband or in his employ or payable by him, shall be her separate property and shall not be subject to her husband's control or liable for his debts.

SECTION 2344. When the husband of any married woman shall have deserted her or shall, from

drunkenness, profligacy, or any cause, neglect or refuse to provide for her support or for the support and education of her children she shall have the right to transact business in her own name and to collect and receive the profits of such business, her own earnings and the earnings of her minor children in her charge or under her control, and apply the same for her own support and the support and education of such children. Such business and earnings shall not be subject to her husband's control or interference or liable for his debts.

May sue in her own name as to her sole property.

SECTION 2345. Every married woman may sue in her own name, and shall have all the remedies of an unmarried woman in regard to her separate property or business, and to recover the earnings secured to her by the two next preceding sections, and shall be liable to be sued in respect to her separate property or business, and judgment may be rendered against her and be enforced against her and her separate property in all respects as if she were unmarried.

Husband not liable for antenuptial debts.

1176 SECTION 2346. No marriage contracted since the third day of April, one thousand eight hundred and seventy-two, or which shall hereafter be contracted shall render the husband liable for the payment of the wife's antenuptial debts; but she shall be liable to all remedies for the recovery of such debts to be enforced against her separate property as if she were unmarried.

Wife may insure life of husband, son, etc., for her benefit.

SECTION 2347. Any married woman may, in her own name or in the name of a third person as her trustee with his assent, cause to be insured for her sole use the life of her husband, son, or other person for any definite period or for the natural life of such person; and any person, whether her husband or not, effecting any insurance of the life of another may cause the same to be made payable or assign the policy to a married woman or to any person in trust for her or her benefit; and every such policy when expressed to be for the benefit of or assigned or made payable to any married woman or any such trustee shall inure to her separate use and benefit and that of her children, and in case of her surviving the period or term of such policy the amount of the insurance shall be payable to her or her trustee for her own use and benefit, free from the claims of her husband and of the person effecting or assigning such insurance and from the claims of their respective representatives and

creditors; but if the annual premium on
1177 any such policy shall exceed the sum of one hundred and fifty dollars and is paid by any person with intent to defraud his creditors an amount equal to the premiums so paid in excess of said sum, with interest thereon, shall inure to the benefit of such creditors, subject, however, to the statute of limitations. The amount of any such insurance may be made payable, in case of the death of such married woman before the period at which it becomes due, to her children or to their guardian for their use, if under age, or to any other person as shall be provided in the policy. In such case the receipt of such married woman or of such children or of their guardian, if minors, shall discharge the insurance corporation from all further liability therefor.

The provision of this section shall apply to all insurance on lives effected before the passage of these statutes.

1178 *Acc't of Justin S. Morrill, Page* 249, *General Ledger B. C. & I. Co.*

Justin S. Morrill.

1883.				1882.		
Mar. 31	To T. J. Peter, p't.	.....	240 83	Apr. 14	By check to T. J. P.....	5,000 00
June 30	" first-m. bonds	105	11,000 00	Dec. 1	" int. subs. to Oct. 1st.....	140 83
				" 11	" check to T. J. P.....	5,000 00
				1884.		
				Jan'y 31	" discount.....	1,100 00
			11,240 83			11,240 83
				Sept. 8	By check on ass'm't.....	500 00
				Oct. 10	" "	150 00
				Aug. 8	" "	400 00
				July 10	" "	600 00
				1886.		
				Oct. —	" "	2,500 00
				Nov. —	" "	470 00
				1887.		
				July —	" "	1,650 00

Acc't of C. C. Huckabee, Page 250.

C. C. Huckabee.

1884.				1882.			
June 30	To first m. bonds.....	105	15,000 00	Dec. 31	.....	.....	15,000 00
				1886.			
				Feb. 28	By T. J. Peter, p't.....	350	2,166 00

1179 *Acc't of R. L. McCalley, Page* 250.

R. L. McCalley.

1884.				1882.		
June 30	To first mort. bonds...	105	5,000 00	Dec. 31	....	5,000 00

Acc't of Jno. G. Murray, Page 251.

John G. Murray.

1884. June 30	To first-m. bonds.....	105	1,000 00	1883. Nov. 30	By T. J. Peter, p't.....	900 00
				1884. Jan. 31	" discount.....	100 00
			1,000 00			1,000 00
				Sept. 30	" cash on ass'm't.....	150 00
				1885. Aug. 31	" "	120 00
				'86. Mar. 31	" "	300 00
				'87. July 31	" "	30 00

1180 *Acc't of Samuel Thomas, Page* 251.

Samuel Thomas.

			1886. July 31	By transfer from page 249.....	10,845 00
			1887. Jan'y 31	" paym't	12,900 00

Acc't of Geo. I. Seney, Page 252.

Geo. I. Seney.

			1886. July 31	By transfer from page 249...	1,200 00
			Nov. 30	" paym't on ass'm't.....	7,200 00
			Dec. 31	" "	14,400 00

1181 *Acc't of C. S. Brice, Page* 252.

C. S. Brice.

			1886. July 31	By transfers from page 249...	810 00

Acc't of E. A. Peter, Page 253.

E. A. Peter.

			1887. Jan'y 31	By paym't on subs. to capital stock.	66	50,000 00

1182 *Acc't of Mrs. C. S. Plumb, Page* 248, *General Ledger B. C. & I. Co.*

Mrs. C. S. Plumb.

1884.				1882.			
June 30	To first-mort. bonds.	105	99,000 00	Feb. 28	By Huckabee draft.	.....	6,000 00
				Apr. 14	" Thomas, for Aldrich, draft.	.....	500 00
				" "	" NewYork draft.	.....	5,000 00
				May 12	" Huckabee "	.....	1,500 00
				" "	" Parrish "	.....	3,500 00
				Aug. 14	" NewYork "	.....	1,500 00
				Sept. 4	" " "	.....	2,000 00
				" "	" engine "Kans."	.....	356 67
				Oct. 6	" New York drafts.	.....	6,500 00
				Nov. 17	" New York drafts.	.....	2,500 00
				Dec. 1	" int. on subs., Oct. 1.	.....	508 42
				" 8	" Emporia ch'k..	.....	666 66
				1883.			
				Feb. 28	" T. J. Peter, p't...	.....	9,500 00
				Mar. 12	" " ...	.....	2,500 00
				" "	" " ...	.....	11,500 00
				Apr. 14	" " ...	.....	5,000 00
				" 16	" " ...	.....	10,000 00
				May 31	" " ...	.....	4,366 93
				June 30	" " ...	.....	6,490 00
				Nov. "	" " ...	.....	2,901 32
				1884.			
				Jan. 31	" " ...	.....	660 00
				" "	" discount.....	.....	9,200 00
				M'ch "	" T. J. P., p't.....	81	2,000 00
				Apr. 30	" "	87	3,340 00
				May 31	" "	95	900 00
				June 30	" discount.....	105	100 00
			99,000 00				99,000 00
1886.							
Nov. 30	To error in credit of $3,000.00 notes twice.	.....	3,000 00	July 31	By ch'ks on ass'm't.	.....	2,863 81
				Sept. 30	" ch'ks on ass'm't.	.....	3,412 50
				Nov. "	" ch'ks on ass'm't.	.....	1,000 00
				Dec. 31	" Nov. note	.....	1,000 00
				1885.			
				Jan'y 31	" note.....	.....	3,000 00
				1884.			
				Oct. —	" int.....	.....	2,970 00
				1885.			
				Feb. 28	" cash ass'm't.	.....	3,622 47
				Apr. 30	" notes.....	.....	1,000 00
				May 31	" "	.....	1,920 00
				Sept. 30	" "	.....	3,000 00
				Dec. 31	" "	.....	7,5 0 00
				" "	" paym't.....	.....	10,000 00
				M'ch 31	" paym't.....	.....	4,800 00

1183 *Account of T. J. Peter, Pages* 246 *&* 247 *of General Ledger B. C. & I. Company.*

T. J. Peter.

1884.				1882.			
June 30	To bills pay.....	105	34,111 92	Apr. 15	By sundry acc'ts ...	.....	19,794 29
" "	" first-m. bonds.....	"	280,000 00	June 30	" Sally Nabor's lands.	.....	250 00
				July 15	" level	.....	45 00
				" 26	" pump	.....	18 00
				Aug. 10	" Boston check...	.....	3,000 00
				" 4	" hoisting engines	.....	1,000 00
				" 29	" boilers	.....	790 00
				" 31	" Boston check...	.....	1,100 00
				Sept. 4	" engine "Kans."	.....	733 33
				" 7	" Boston check...	.....	3,000 00
				" 9	" Lewis' commission.	.....	800 00
				" 12	" James & Co.'s acc't.	.....	734 35
				" 18	" Hardy & Co.'s acc't.	.....	172 04
				" "	" Gast & Co.'s acc't.	.....	179 00
				" "	" Tudoe & Co.'s acc't.	.....	90 00
				" 20	" hoisting engines.	.....	1,000 00
				" "	" Boston check...	.....	2,000 00
				" 23	" Beggs & Son's acc't.	.....	168 30
				" "	" Hale land.....	.....	200 00
				" "	" Gentry land.....	.....	60 00
				" "	" Murray salary..	.....	75 00
				" 25	" Boston check...	.....	1,800 00
				" "	" Roebling Sons' acc't.	.....	209 10
				Oct. 2	" sundry acc'ts ...	.....	1,962 45
				" 3	" French Nabors..	.....	60 00
				" "	" Wiggins & Trimble.	.....	1,500 00
				" 7	" expenses	.....	30 00
				" "	" Murray salary..	.....	30 00
				Nov. —	" revolver, rollers, &c.	.....	21 50
				" —	" Murray salary...	.....	70 00
				Dec. 3	" int. subs. to Oct. 1.	.....	631 39
				" "	" voucher blanks.	.....	30 35
				" 8	" Boston check...	.....	4,000 00
				" 20	" roofing iron.....	.....	527 61
				1883.			
				Jan'y —	" Plumb check...	.....	750 00
				" —	" nail machines..	.....	350 00
					" Wetmore, stationery.	.....	10 05
					" Boston check...	.....	10,000 00
					" " ...	.....	5,000 00
					" " ...	.....	17,000 00
					" Planer, expense.	.....	1,786 00
					" Smith, Hamill..	.....	503 00
					" lawyers	.....	700 00
			314,111 92				82,180 76
1184							
1884.				1883.			
June 30	To am't bro't forw'd.....		314,111 92	Feb'y 28	By page 246.....	.....	82,180 76
				" "	" T. J. Peter, pt....	.....	625 00
				Mar. 9	" " ...	.....	4,000 00
				19	" " ...	.....	5,000 00
				"	" " ...	.....	1,850 00
				26	" " ...	.....	8,344 24
				Apr. 4	" " ...	.....	490 00
				" 6	" " ...	.....	1,296 20
				" 7	" " ...	.....	245 00
				" 9	" " ...	.....	149 00
				" 10	" " ...	.....	141 00
				" "	" " ...	.....	105 00
				" 12	" " ...	.....	1,500 00
				" 1	" " ...	.....	1,500 00

Account of T. J. Peter, &c.—Continued.

T. J. Peter.

				May 31	By T. J. Peter, p't		18,227 45
				June 30	" "		10,000 00
				July 31	" "		14,854 00
				Aug. "	" "		15,724 61
				Sept. 30	" "		10,059 01
				Oct. 31	" "		18,651 28
				Nov. 30	" "		14,694 97
				Dec. 31	" "		1,634 37
				1884.			
				Jan'y 31	" "	64	29,289 63
				" "	" discount	67	23,100 00
				Feb'y "	" T. J. P., pt	73	6,674 74
				Mar. "	" "	81	4,312 39
				Apr. 30	" "	87	7,644 00
				May 31	" "	95	26,014 10
				June 30	" "	102	904 97
				" "	" discount	105	4,900 00
			314,111 92				314,111 92
1885.							
Aug. 31	To paym't Carter note & int		1,040 50	July 31	By cash on ass'm't		3,991 76
				Aug. 31	" "		2,600 00
'85.				Sept. 30	" "		11,563 43
Apr. 30	To bonds, 6		5,400 00	Oct. "	" "		31,922 04
" "	" two Carter notes		7,000 00	Nov. "	" "		1,512 31
				Dec. 31	" "		106 89
				1885.			
				Jan'y 31	" "		5,514 25
				Feb'y "	" "		2,200 00
				Apr. 28	" "		8,412 50
				'86.			
				Mar. 31	" "		22,837 41
				1887.			
				Jan'y 31	" "		6,420 85

1185 *Acc't of Samuel Thomas, Page* 249, *General Ledger B. C. & I. Co.*

General Samuel Thomas.

1883.				1882.			
Dec. 31	To int. on 1st m. bonds		321 92	Feb. 17	By Parsons' land		4,388 37
June 30	" first-m. bonds	105	83,000 00	June 22	" New York check		10,611 63
" "	" balance		436 45	Oct. 2	" A. G. Parrish, draft		15,000 00
				Dec. 1	" int. subs. to Oct. 1st		341 42
				1883.			
				Feb. 28	" T. J. Peter, pt		7,500 00
				Mar. 31	" "		7,500 00
				Apr. 1	" "		116 95
				" 28	" "		15,000 00
				June 30	" "		15,000 00
				1884.			
				Jan'y 31	" discount		8,300 00
			83,758 37				83,758 37
				1884.			
July 31	To Samuel Thomas	251	10,845 00	June 30	By balance		436 45
" "	" C. S. Brice	252	810 00	July 31	" ch'k on ass'm't		1,627 50
" "	" Geo. I. Seney	252	1,200 00	Oct. "	" "		3,981 05
				Dec. "	" C. S. Brice, ass'm't		270 00
				1885.			
				Feb. 28	" "		270 00
				" "	" ch'k, ass'm't		1,200 00
				Sept. 30	" Thomas & Seney		3,600 00
				Nov. 30	" C. S. Brice		180 00
				1886.			
				June 30	" Thomas		1,200 00
				July 31	" Brice		90 00
			12,855 00				12,855 00

1186 *Copy of Bond Issued by Brierfield Coal and Iron Company.*

No. 1. UNITED STATES OF AMERICA. $1,000.

The Brierfield Coal and Iron Company of Alabama.

First-Mortgage and Sinking-Fund Gold Bonds.

Limited to $500,000.

Know all men by these presents that the Brierfield Coal & Iron Company of Alabama, a corporation created and organized under the laws of the State of Alabama, hereby acknowledges itself to owe Preston B. Plumb, trustee, or bearer, the sum of one thousand dollars in gold coin, at par, of the United States of America, to be paid at the office of the company in Brierfield, Bibb county, State of Alabama, or at the office of said company at —— in the city of New York, State of New York, on the first day of October, A. D. one thousand nine hundred and twelve, with interest on the said sum from and after the date hereof, at the rate of six per cent. per annum, in gold coin as aforesaid, payable at said offices, on the first days of April and October of each year, until the said principal shall be fully paid, on the presentation and surrender of the annexed coupons as they respectively become due; said coupons shall be payable to the bearer thereof whether the bond is registered or not. This bond is one of a series limited to and aggregating the sum of five hundred thousand dollars and is secured by a deed of trust or first mortgage, bearing date September 1st, 1882, duly executed and delivered by the said The Brierfield Coal & Iron Company of Alabama to the said Preston B. Plumb, trustee, of all the property now owned by said company or that may hereafter be acquired by it in the State of Alabama, and is embraced by
1187 the sinking-fund provisions therein contained and subject to them.

$1,000.

This bond shall pass by delivery unless registered, or, if registered, by transfer on the books of the company at its office in Brierfield, Bibb county, in the State of Alabama, or at any other place which the company may determine. After a registration of ownership, certified hereon by the transfer agent of the company, no transfer, except upon the books of the company, shall be valid unless the last transfer be to bearer, which shall restore transferability by delivery; but this bond shall continue subject to successive registrations and transfers to bearer as aforesaid at the option at each holder.

This bond shall not become obligatory until it shall have been authenticated by a certificate indorsed hereon and duly signed by the said trustee.

In witness whereof the said company has caused its seal to be

hereto affixed and these presents to be signed by its president and attested by its secretary on the first day of October, A. D. 1882.

[Seal The Brierfield Coal & Iron Company of Alabama.]

THE BRIERFIELD COAL & IRON COMPANY OF ALABAMA,
By T. J. PETER, *President.*

Attest: JOHN G. MURRAY, *Secretary.*

(Endorsed on back as follows:)

Trustee's Certificate.

This is to certify that the within bond is one of a series of first-mortgage bonds limited to five hundred thousand dollars, secured by the deed of trust or mortgage within mentioned, dated September 1st, 1882, and delivered by the Brierfield Coal and Iron Company of Alabama to Preston B. Plumb, trustee.

(S'g'd) P. B. PLUMB, *Trustee.*

1188 Date of registry, November 13th, 1882.

In whose name registered, T. J. Peter, trustee for Edw. T. Peter.

Registrar, John G. Murray.

No. 1. The Brierfield Coal and Iron Company of Alabama six per cent. first-mortgage and sinking-fund gold bond. $1,000.00. Interest payable April 1st and October 1st at the office of said company in Brierfield, Alabama. Principal due October 1st, 1912.

Attached to this bond were semi-annual coupons in words and figures as follows:

"$30.00. $30.00.

On the first day of October, 1887, the Brierfield Coal and Iron Company will pay to bearer, at the office of said company in Brierfield, State of Alabama, thirty dollars, being six months' interest on bond No. 1.

T. J. PETER, *President.*"

1189 UNITED STATES OF AMERICA, *Middle District of Alabama,* } *ss:*

I, J. W. Dimmick, clerk of the circuit court of the United States for the middle district of Alabama, hereby certify that the foregoing pages, numbered from one to —, inclusive, contain a full, true, and complete transcript of the record and proceedings had in a case lately depending in said court, wherein Hollins, Sons & Company and others were complainants and The Brierfield Coal and Iron Company and others defendants, as fully and completely as the same appear of record and on file in my office as such clerk.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be affixed, at Montgomery, in said district, this 11th day of October, A. D. 1889.

[Seal of the United States Circuit Court, Middle District of Alabama.]

J. W. DIMMICK,
Clerk U. S. Circuit Court, Mid. Dist. of Alabama.

Endorsed on cover: M. Alabama C. C. U. S. No. 1423. R. S. Hollins, Sr., R. S. Hollins, Jr., John Dickinson, and John A. Hollins, copartners under the firm name of Hollins, Sons & Company, and Thomas D. Fite, William Porter, A. G. Porter, W. J. Porter, L. F. Davis, A. J. Lyles, and J. E. Bentley, copartners under the firm name of Fite, Porter, Lyles & Company, appellants, *vs.* The Brierfield Coal and Iron Company, W. L. Chambers, trustee, Thomas J. Peter, *et al.* Filed October 19, 1889.

CASE No. 13,830.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~223~~. 29

R. S. HOLLINS, SR., ET AL., APPELLANTS,

vs.

THE BRIERFIELD COAL AND IRON COMPANY ET AL.

WRIT OF CERTIORARI AND RETURN.

FILED MARCH 28, 1893.

THE UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States to the judges of the circuit court of the United States for the middle district of Alabama, Greeting:

Whereas in a certain suit in said circuit court between R. S. Hollins, Sr., R. S. Hollins, Jr., John Dickinson, and John A. Allen, copartners under the firm name and style of Hollins, Sons & Company *et al.*, complainants, and The Brierfield Coal & Iron Company *et al.*, defendants, which suit was removed to the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings in said cause has been suggested, to wit:

"That there was omitted from the record by mistake the report of the special master in said case No. 103 in the court below, the record and proceedings in which are part of the record in this case."

You therefore are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Supreme Court

of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 28th day of March, A. D. 1893.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Supreme Court of the United States, October Term, 1892.

R. S. HOLLINS, SR., *et al.*, Appellants,
—
THE BRIERFIELD COAL & IRON COMPANY *et al.* } No. 223.

Mr. William F. Mattingly, of counsel for the appellees, submitted to the consideration of the court a suggestion of a diminution of the record and a motion for a writ of certiorari herein; whereupon it is now here ordered by the court that the writ of certiorari be, and the same is hereby, awarded, returnable forthwith, and leave is granted to file the record presented as a return thereto.

March 27, 1893.

HOLLINS, SONS AND COMPANY and Others
vs.
THE BRIERFIELD COAL AND IRON COMPANY and Others.

Report of special master in case of W. L. Chambers, trustee, *vs.* The Brierfield Coal and Iron Company and others, omitted from transcript sent to the Supreme Court of the United States.

In the Circuit Court of the United States for the Middle District of Alabama, in the Fifth Judicial Circuit.

HOLLINS, SONS AND COMPANY and Others
vs
THE BRIERFIELD COAL AND IRON COMPANY and Others. } No. 107.

Pending an appeal taken by the complainants to the Supreme Court of the United States.

I, J. W. Dimmick, clerk of the circuit court of the United States for the middle district of Alabama, hereby certify that on the trial of this case the record, proceedings, orders, and decrees in the case of W. L. Chambers, trustee, against The Brierfield Coal and Iron Company and others, then pending in the circuit court of the United States for the middle district of Alabama, were read in evidence as appears from the note of testimony on pages 524, 525, 526, and 527 of the certified transcript sent by the clerk of this court to the Supreme Court of the United States; and I further certify that the report of the special master made in the case of W. L. Chambers, trustee, *vs.* The Brierfield Coal and Iron Company and others was by mistake omitted from said transcript so sent to the Supreme Court of the United States, and the said report of the special master is in words and figures following, to wit:

In the Circuit Court of the United States for the Middle District of Alabama.

W. L. CHAMBERS, Trustee,
vs.
THE BRIERFIELD COAL AND IRON COMPANY and Others. } In Equity. No. 103.

On reference before J. W. Dimmick, special master.

Pursuant to a decree entered on the 13th day of July, 1888, in the above-stated cause, the undersigned, special master, proceeded to execute the reference ordered by said decree.

After giving notice to the parties in interest of the time and place he did, on the 25th day of July, 1888, call before him and examine John G. Murray, W. D. Carter, J. T. Fitzgerald, and R. L. McCalley, whose testimony was taken down by a stenographer and read over to each of said witnesses.

The master further reports that he was attended by W. S. Thorington, Esq., solicitor for complainant; E. W. Pettus, Esq., representing Esther A. Peter, The Commercial Bank of Selma, The City National Bank of Selma, and J. T. Fitzgerald; Thomas H. Watts, Esq., representing C. C. Huckabee and R. L. McCalley; R. W. Walker, Esq., representing Samuel Thomas, George I. Seney, and Calvin S. Brice; Patrick C. Massie, Esq., representing the Brierfield Coal and Iron Company, Thomas J. Peter, and Jno. G. Murray; A. A. Wiley, Esq., representing W. D. and K. Carter, Jr.

The master further reports that the reference so ordered was adjourned from time to time to suit the convenience of the parties in interest and to enable them to get a full statement of all the facts required to be ascertained by the court.

The proceedings and testimony so taken are herewith submitted to the court in support of this report and the findings of the master.

The master reports that the Brierfield Coal and Iron Company became and was duly incorporated by proceedings had and obtained substantially as set forth in the original bill of complaint and for the purposes set out in said bill, with its principal office and place of business at Brierfield, in the county of Bibb, State of Alabama, with an authorized capital of seven hundred and fifty thousand dollars, divided into shares of the par value of one hundred dollars each.

That every legal prerequisite was duly complied with, and the said corporation became and was legally vested with all the rights, privileges, powers, and franchises, enumerated in the declaration filed in the probate court of Bibb county, conferred by the general incorporation laws of Alabama; that subsequently, by an act of the General Assembly of the State of Alabama, approved on the 12th day of December, 1884, entitled "An act to amend and ratify the charter of the Brierfield Coal and Iron Company of Bibb County, Alabama," said corporation was ratified and confirmed with additional powers.

That three hundred and seventy-five thousand dollars of the capital stock was subscribed May 4, 1882, as follows:

T. J. Peter,	1,200	shares	120,000 00
Mrs. E. A. Peter,	500	"	50,000 00
Mrs. C. S. Plumb,	500	"	50,000 00
Plumb and Hood,	500	"	50,000 00
Samuel Thomas and associates,	750	"	75,000 00
Justin S. Morrill,	100	"	10,000 00
C. C. Huckabee,	150	"	15,000 00
R. L. McCalley,	50	"	5,000 00

The stock subscribed for was issued as follows:

T. J. Peter	1,000	shares.
T. J. Peter, trustee for E. T. Peter	50	"
" " F. J. Peter	50	"
" " Geo. F. Peter	50	"
" " Blanchie E. Peter	50	"
Mrs. E. A. Peter	500	"
Mrs. C. S. Plumb	990	"
A. O. Beebe	750	"
Justin S. Morrill	100	"

The stock subscribed for by C. C. Huckabee and R. L. McCalley has never been issued, for reasons hereinafter set forth.

The master reports that the present owners of the capital stock are as follows:

T. J. Peter	1	share.
C. L. Bates	1	"
E. T. Peter	1	"
E. T. Peter, trustee for E. A. Peter	697	shares.
Laura E. Williams	500	"
Esther A. Peter	500	"
Mrs. C. S. Plumb	990	"
A. O. Beebe	800	"
Calvin S. Brice	30	"
Justin S. Morrill	110	"
John G. Murray	6	"
R. L. McCalley	50	"
C. C. Huckabee	150	"

The master further reports that the subscribers to the capital stock have paid as follows:

T. J. Peter	120,000 00
Mrs. C. S. Plumb	43,089 47
Samuel Thomas and associates (Samuel Thomas, Calvin S. Brice, & Geo. I. Seney)	47,355 00
Mrs. E. A. Peter	50,000 00
Justin S. Morrill	6,270 00
R. L. McCalley	5,000 00
C. C. Huckabee	2,166 00

These payments were made upon calls made by the company, namely:

July 19, 1884, an assessment of 20 %; on April 20, 1885, a second assessment of 7 %; on Jan. 1, 1886, an assessment of 30 %—in all 57 %.

The master further reports that Mrs. C. S. Plumb, in May, 1887, forwarded to the secretary of the company 495 past-due coupons of the Brierfield Coal and Iron Company, to be applied on her stock subscription, but they were returned to her by order of P. B. Plumb, trustee, who had come into possession of such property as such trustee; that the said coupons were returned to Mrs. C. S. Plumb at the instance and direction of said trustee; that said coupons, amounting to $14,850.00, should have been applied to the discharge of the amount due by Mrs. Plumb upon her subscription to the capital stock.

The master further finds and reports that there is a balance due and unpaid upon the stock subscribed for by Mrs. C. S. Plumb (after crediting her account with the proceeds of 493 coupons & interest, $18,631.80) $38,278 42

Samuel Thomas and associates (Samuel Thomas, Calvin S. Brice, & Geo. I. Seney) 27,645 00

Justin S. Morrill 3,730 00

C. C. Huckabee 14,621 52

Total $84,274 94

It appears that, the company being in great need of necessary means to carry on its business, a meeting of the stockholders was held at the office of the company, at Brierfield, on September 1, 1882, after notice given in conformity with the laws of the State in such cases made and provided, to consider the propriety of placing a mortgage upon the property of the company and the issuance of bonds thereunder, at which meeting all the subscribers to the capital stock were represented.

A resolution was adopted authorizing and directing the board of directors to mortgage the property owned by the company to P. B. Plumb, trustee.

And upon the same day the board of directors authorized and directed the officers of the company to execute a mortgage or deed of trust to said P. B. Plumb, trustee.

On the same day the mortgage was executed by T. J. Peter, president, attested by the seal of the company, witnessed by the secretary, and signed by P. B. Plumb, trustee. Under said mortgage 493 bonds for $1,000 each were issued.

Of these bonds there were issued to T. J. Peter, trustee for E. T. Peter, 5 bonds, $1,000 each, numbered 1, 2, 245, 246, and 247.

These bonds were registered on the books of the company in the name of T. J. Peter, trustee for E. T. Peter.

There were five other bonds issued to T. J. Peter, trustee for F. J. Peter, numbered 3, 4, 248, 249, and 250, for $1,000 each.

The said bonds were registered on the books of the company in the name of T. J. Peter, trustee for F. J. Peter.

There were issued to T. J. Peter, trustee for G. F. Peter, 5 other bonds, numbered 5, 6, 189, 190, and 191, for $1,000 each, and were registered on the books of the company in the name of T. J. Peter, trustee for G. F. Peter.

There were issued to T. J. Peter, trustee for Blanchie E. Peter, 5 other bonds, numbered 7, 8, 192, 193, and 194, for $1,000 each, and now stand registered on the books of the company in the name of T. J. Peter, trustee for Blanchie E. Peter.

All of the bonds so issued to T. J. Peter, trustee, were paid for in cash at 90c. on the dollar.

There were issued to Mrs. C. S. Plumb 99 bonds, numbered 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 310, 311, 312, 489, 490, 491, 492, 493, 494, 309.

Each of said bonds of the denomination of $1,000, and were all paid for in cash at 90c. on the dollar.

Of the bonds issued to Mrs. C. S. Plumb the following stand registered on the books of the company in her name:

284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 310, 311, 312, 489, 490, 491, 492, 493, 494, 309.

The other bonds issued to her are payable to bearer.

There were issued to Justin S. Morrill 11 bonds, numbered 118, 119, 120, 121, 122, 123, 113, 114, 115, 116, 117, and were paid for in cash at the rate of 90c. on the dollar.

Of the bonds so issued there were registered on the books of the company, in the name of Justin S. Morrill 5 bonds, numbered 118, 119, 120, 121, and 122; the others so issued are payable to bearer.

There were issued to A. O. Beebe 83 bonds, numbered 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 251, 252, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 262, 263, 264, 253, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 139, 140, 141, 142, 143, 144, 145, 254, 255, 256, 257, 258, 259, 260, 261, 265, and were paid for in cash at 90c. on the dollar.

It appears that they were paid for by Samuel Thomas and associates (Samuel Thomas, George I. Seney, and Calvin S. Brice). The three last named composed Samuel Thomas and associates and also George I. Seney and associates, and appear to be down on the books of the company both ways.

Of these bonds there now stand registered on the books of the company in the name of A. O. Beebe numbers 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 251, 252, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, and 282.

And in the name of George I. Seney numbers 41, 42, 43, 44, 45,

46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 139, 140, 141, 142, 143, 144, 145.

Of the bonds so issued to A. O. Beebe there stand registered on the books of the company in the name of Esther A. Peter bonds numbered 254, 255, 256, 257, 258, 259, 260, 261, 265.

The remaining 4 bonds, numbered 262, 263, 264, and 253, are payable to bearer.

It appears from the testimony that said bonds were issued to said Beebe by instructions of Samuel Thomas, by whom they had been paid for.

It further appears from the evidence that 40 of the bonds issued to said A. O. Beebe were allotted to George I. Seney, 40 to Samuel Thomas, and 3, numbered, respectively, 280, 281, & 282, were allotted to Calvin S. Brice.

There were issued to C. C. Huckabee 13 bonds, as follows: No. 204, 205, 206, 207, 437, 438, 439, 440, 441, 442, 450, 451, 452, all payable to bearer. They were paid for in cash at the rate of 90c. on the dollar.

There was issued to John G. Murray 1 bond, No. 283, which appears to be registered on the books of the company in the name of said John G. Murray, and was paid for in cash at the rate of 90c. on the dollar.

There were issued to Esther A. Peter 50 bonds, as follows: No. 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 74, 75, 76, 77, 123, 124, 125, 126, 127, 180, 181, 182, 183, 184, 185, 186, 187, 188, all registered on the books of the company in the name of Esther A. Peter, and were paid for in cash at 90c. on the dollar.

There were issued to T. J. Peter 216 bonds, as follows: No. 360, 362, 363, 364, 365, 366, 367, 368, 369, 370, 306, 307, 308, 313, 314, 315, 316, 317, 318, 319, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 374, 375, 376, 377, 378, 379, 380, 390, 391, 392, 393, 394, 395, 396, 397, 398. 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 459, 460, 461, 462, 463, 464, 465, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 495, 496, 497, 498, 499, 500, 320, 321, 322, 323, 195, 196, 197, 198, 199, 200, 201, 202, 203, 208, 209, 210, 211, 212, 213, 214, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 322, 325, 326, 327, 328, 329, 330, 331, 332, 333, 381, 382, 383, 384, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 453, 454, 455, 456, 457, 458, 371, 372, 373, 78, 359, 361, 386, 387, 388, 389, 229, 230, 231, 232, 233, 234, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, and were paid for in cash at the rate of 90c. on the dollar.

It further appears that of the bonds so paid for by T. J. Peter the following now stand registered on the books of the company in the name of Esther A. Peter: No. 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 360, 362, 363, 364, 365, 366, 367, 368, 369, 370, 306, 307, 313, 314, 315, 316, 317, 318, 319, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350,

351, 352, 353, 354, 355, 356, 357, 358, 374, 375, 376, 377, 378, 379, 380, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 495, 496, 497, 498, 499, 500, 320, 321, 322, & 323. The remainder are payable to bearer.

It further appears that there were seven (7) other bonds retained in the treasury of the company that were used for collateral security for a loan of five thousand dollars made by the Commercial Bank of Selma to said Brierfield Coal and Iron Company, evidenced by 2 notes, each for $2,500.00, endorsed by John G. Murray and Thos. J. Peter. Said bonds were numbered respectively 443, 444, 445, 446, 447, 448, 449.

Subsequently said Murray, one of the endorsers, paid the said notes to the bank, and the bonds that had been placed as collateral security in support of said notes, together with the notes, were transferred by the bank to said John G. Murray without recourse. This was done under an agreement made with Thos. J. Peter, pres't of the company, when the loan for $5,000.00 was first negotiated—that is, that in the event said John G. Murray should be compelled to pay as indorser the said 7 bonds should be delivered to him as security for such payment.

It further appears that upon placing the said bonds as collateral for the loan above referred to numbers 473, 474, & 475 had previously been placed with the Commercial Bank of Selma as security for a different loan. Said Thos. J. Peter then substituted for the bonds last above mentioned three other bonds, numbered 371, 372, & 373, which had previously been issued to him and paid for by him. These bonds were used as collateral for said loan and were delivered to said Murray by the Commercial Bank of Selma upon payment of the loan.

It further appears from the testimony that 90c. on the dollar in cash was the best price that could be obtained for the bonds sold by the company.

That the issue and sale of the bonds was necessary to develop the property, and that the money received from the sale of all the bonds was used for the purposes of improving and developing the property, and that the sum of about eight hundred thousand dollars was expended by said company on said property in its development and in carrying on its business.

The master further finds and reports to the court that the bonds and coupons of the Brierfield Coal and Iron Company, together with interest up to July 1, 1889, proved and filed before him are as follows, to wit:

Esther A. Peter proved bonds numbered from 1 to 40, inclusive; 74 to 77, inclusive; 123 to 127, inclusive; 180 to 194, inclusive; 215 to 228, inclusive; 245 to 250, inclusive; 254 to 259, inclusive; 320 to 323, inclusive; 362 to 370, inclusive; 306 to 308, inclusive; 313 to 319, inclusive; 334 to 358, inclusive; 374 to 380, inclusive; 390 to 422, inclusive; 459 to 488, inclusive; 495 to 500, inclusive;

260, 261, 265, & 360; in all 218, each of the denomination of $1,000, and were paid for in cash at the rate of 90c. on the dollar.

218 bonds, $1,000 each	218,000 00
286 coupons, due Apr. 1, 1886, @ $30	8,580 00
Interest thereon	2,230 80
283 coupons, due Oct. 1, 1886	8,490 00
Interest	1,867 80
268 coupons, due Apr. 1, 1887	8,040 00
Interest	1,447 20
218 coupons, due Oct. 1, 1887	6,540 00
Interest	915 60
218 coupons, due Apr. 1, 1888	6,540 00
Interest	654 00
218 coupons, due Oct. 1, 1888	6,540 00
Interest	392 40
Interest on principal for 9 months @ 6 %	9,810 00
Bought of J. T. Fitzgerald 93 coupons since they were filed by him	2,790 00
Interest thereon	373 80
Bought of Jno. G. Murray 3 bonds, viz., 371, 372, & 373, since they were filed	3,000 00
Bought of Commercial Bank of Selma 96 coupons since they were filed	2,880 00
Interest thereon	324 00
Bought of Ala. Nat. bank, B'h'm, 45 coupons since they were filed	1,350 00
Interest thereon	189 00
282 coupons, due Oct. 1, 1885	8,460 00
Interest thereon	2,538 00
	301,952 60

Of the foregoing bonds it appears that bonds No. 1, 2, 245, 246, and 247 are registered in the name of T. J. Peter, trustee for E. T. Peter. No. 3, 4, 248, 249, and 250 are registered in the name of said T. J. Peter as trustee for Florence J. Peter. No. 5, 6, 189, 190, and 191 are registered in the name of said T. J. Peter as trustee for George F. Peter, and No. 7, 8, 192, 193, and 194 are registered in the name of said T. J. Peter as trustee for Blanchie E. Peter; said bonds having been given by Mrs. Peter to her children, but were presented and proved before the master by said Mrs. E. A. Peter as her property.

Mrs. M. S. Pomeroy proved bonds numbered 229, 230, 231, 232, 233, 234, 262, 263, and 264, of which No. 229, 230, 231, 233, and 234 are registered in the name of said Mrs. M. S. Pomeroy. The other 3, namely, 262, 263, & 264, are payable to bearer.

9 bonds, $1,000 each	9,000 00
Interest on principal for 9 months, Oct. 1, 1888, to July 1, 1889, 6%	405 00
	$9,405 00

Justin S. Morrill proved bonds No. 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122.

11 bonds, $1,000 each	11,000 00
11 coupons, payable Apr. 1, 1888	330 00
Interest	35 20
11 coupons, payable Oct. 1, 1888	330 00
Interest	26 40
Interest on principal, 9 months, Oct. 1, 1888, to July 1, 1889, 6%	495 00
	$12,216 60

Of which bonds No. 112, 113, 114, 115, 116, and 117 are registered on the books of the company in the name of Justin S. Morrill. The others are payable to bearer.

It further appears from the testimony that Thomas J. Peter, president of the Brierfield Coal and Iron Company, gave his personal indorsements on the company's paper to the amount of $77,800 from time to time to the City National bank, the Commercial Bank of Selma, the Alabama National Bank of Birmingham, and others to raise money to carry on the business of the company.

He also placed with said banks a large number of bonds purchased by him from the company, his own property, as collateral security to said loans, and in consideration of his indorsements, the use of his personal property, the board of directors agreed by resolution that no further calls should be made on said Peter for the unpaid balance on his stock subscription until the company discharged the obligations which he had thus assumed for it and for which he had pledged his personal property; that his stock should be held and considered fully paid up and the unpaid balance thereon cancelled and remain credited on the books of the company until the company should release and discharge him from his liabilities so paid or assumed for it.

Pursuant to said agreement said Peter, as surety and indorser, paid the Commercial Bank of Selma on, to wit, the 20th day of October, 1888	$24,265 68
To the Ala. Nat. Bank of Birmingham on the 17th of Oct., 1888	8,704 85
To J. T. Fitzgerald, Nov. 15, 1888	7,040 00
Total	$40,010 53
By the terms of the resolution before referred to indemnifying said Peter for his indorsements as aforesaid the master finds that said Peter is entitled to a credit upon his stock subscription for the amount so paid by him, namely	$40,010 53
This, together with the assessments paid on calls by the board amounting to	83,640 85
	$123,651 38
Leaves a balance to his credit of	**$3,651 38**

J. T. Fitzgerald is the holder of 20 bonds, as follows:
No. 78, 359, 361, 386, 387, 388, 389, 204, 205, 206, 207, 437, 438, 439, 440, 441, 442, 450, 451, and 452.

20 bonds, $1,000 each	20,000 00	
20 coupons, due Apr. 1, 1887, @ $30	600 00	
Interest	108 00	
20 coupons, due Oct. 1, 1887	600 00	
Interest	84 00	
20 coupons, due Apr. 1, 1888	600 00	
Interest	60 00	
20 coupons, due Oct 1, 1888	600 00	
Interest	36 00	
13 coupons, due Oct., 1886	390 00	
Interest	85 80	
Interest on principal for 6 months, Oct. 1, 1888, to July 1, 1889, 6%	900 00	
	$24,063 80	
To 93 coupons sold to Mrs. E. A. Peter since they were proved and filed, & interest	3,163 80	
Balance		$20,900 00

The bonds are held by said Fitzgerald as collateral security for a loan of $15,000.00, evidenced by 3 notes, 2 for $6,000.00 each and one for $3,000.00, with 7 bonds owned by said T. J. Peter and 13 bonds owned by the company, pledged as collateral security.

John G. Murray is the owner and holder of bond # 283.

1 bond	1,000 00
Coupon attached Oct. 1, 1887	30 00
Interest on coupon	4 20
Interest on principal for 9 months, Oct. 1, 1888, to July 1, 1889, 6%	45 00

Said Murray also holds 7 other bonds transferred to him by the Commercial Bank of Selma, which said bank held as collateral security to 2 notes, each for $2,500.00, upon which said Jno. G. Murray & T. J. Peter were indorsers. Said Murray having paid the notes to said bank, the said notes & bonds were transferred to him by said bank without recourse.

The bonds are numbered 443, 444, 445, 446, 447, 448, and 449.

7 bonds, $1,000 each	7,000 00
7 coupons, due Apr., 1887	210 00
Interest	37 80
7 coupons, due Oct., 1887	210 00
Interest	29 40
7 coupons, due Apr., 1888	210 00
Interest	21 00
7 coupons, due Oct., 1888	210 00

Interest	12 60	
Interest on principal for 9 months, Oct. 1, 1888, to July 1, 1889, 6%	315 00	
	8,255 80	
To 3 bonds sold & transferred to Mrs. E. A. Peter since they were proved & filed before the master	3,000 00	
		5,255 80
		$6,335 00

The Commercial Bank of Selma is the holder of 27 bonds, numbered 200, 201, 202, 203, 434, 435, 436, 453, 454, 455, 456, 457, 458, 235, 236, 237, 238, 239, 240, 443, 444, 445, 195, 196, 197, 198, and 199.

27 bonds, $1,000 each	$27,000 00
Interest on principal for 9 months, Oct. 1, 1888, to July 1, 1889, 6%	1,215 00
15 coupons, due Apr., 1887	450 00
Interest	81 00
27 coupons, due Oct., 1887	810 00
Interest	113 40
27 coupons, due Apr., 1888	810 00
Interest	81 00
27 coupons, due Oct., 1888	810 00
Interest	48 60
	31,419 00
To 96 coupons sold to Mrs. E. A. Peter since they were proved and filed before the master, $2,880 and interest, $324	3,204 00
Balance	$28,215 00

The Ala. Nat. Bank of Birmingham is the holder of 9 bonds, numbered 244, 285, 243, 384, 383, 242, 241, 381, and 382.

9 bonds, $1,000 each	$9,000 00
Interest on principal for 9 months, Oct. 1, 1888, to July 1, 1889, 6%	405 00
9 coupons, due Oct. 1, 1886	270 00
Interest	59 40
9 coupons, due Apr. 1, 1887	270 00
Interest	48 60
9 coupons, due Oct. 1, 1887	270 00
Interest	37 80
9 coupons, due Apr. 1, 1888	270 00
Interest	27 00

9 coupons, due Oct. 1, 1888		270 00
Interest		16 20
		$10,944 00
To 45 coupons sold and transferred to Mrs. E. A. Peter since they were proved & filed before the master, $1,350 & int., $189		1,539 00
Balance		$9,405 00

The City Nat. Bank of Selma is the holder of 28 bonds as collateral security for loans made to the Brierfield Coal and Iron Company and indorsed by said T. J. Peter personally to the amount of $14,000.

The bonds are numbered 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 223, 424, 425, 427, 428, 429, 208, 209, 210, 211, 212, 213, 214, 430, 431, 432, and 433.

28 bonds, $1,000 each	28,000 00	
28 coupons, due Oct. 1, 1887	840 00	
Interest	117 60	
28 coupons, due Apr. 1, 1888	840 00	
Interest	84 00	
28 coupons, due Oct. 1, 1888	840 00	
Interest	50 00	
Interest on principal for 9 months, Oct 1, 1888, to July 1, 1889, 6 %	1,260 00	
		32,031 60

Samuel Thomas is the owner of 27 bonds, numbered 252, 251, 130, 131, 132, 133, 134, 135, 129, 128, 138, 137, 136, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, and 279.

27 bonds, $1,000 each	27,000 00	
Interest on principal for 9 months, Oct. 1, 1888, to July 1, 1889, 6 %	1,215 00	
27 coupons, due Apr., 1887	810 00	
Interest	145 80	
27 coupons, due Oct., 1887	810 00	
Interest	113 40	
27 coupons, due Apr., 1888	810 00	
Interest	81 00	
27 coupons, due Oct., 1888	810 00	
Interest	48 60	
		31,843 80

Of the foregoing bonds owned by Samuel Thomas numbers 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 251, 252, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, and 279 stand registered on the books of the company in the name of A. O. Beebe, but it appears from the evidence that they were bought and paid for and are owned by Samuel Thomas.

Calvin S. Brice is the owner of 3 bonds, No. 280, 281, & 282.

3 bonds, $1,000 each	3,000 00	
3 coupons, due Oct. 1, 1888	90 00	
Interest	5 40	
Interest on principal for 9 months, Oct. 1, 1888, to July 1, 1889, 6 %	135 00	
		3,230 40

And they are registered on the books of the company in the name of A. O. Beebe.

George I. Seney is the owner of 40 bonds, numbered 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 139, 140, 141, 142, 143, 144, and 145.

40 bonds, $1,000 each	40,000 00	
Interest Oct. 1, 1888, to July 1, 1889, 6 %	1,800 00	
40 coupons, due Apr., 1887	1,200 00	
Interest	216 00	
40 coupons, due Oct., 1887	1,200 00	
Interest	168 00	
40 coupons, due Apr., 1888	1,200 00	
Interest	120 00	
40 coupons, due Oct., 1888	1,200 00	
Interest	72 00	
		47,176 00

Of the foregoing bonds Nos. 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 139, 140, 141, 142, 143, 144, & 145 stand registered on the books of the company in the name of George I. Seney.

Thomas S. Krutz is the holder of 100 bonds, numbered as follows: 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 253, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 309, 310, 311, 312, 489, 490, 491, 492, 493, and 494.

100 bonds, $1,000 each	100,000 00	
Interest Oct. 1, 1888, to July 1, 1889, 6 %	4,500 00	
109 coupons, due Oct. 1, 1887	3,270 00	
Interest	457 80	
109 coupons, due Apr. 1, 1888	3,270 00	
Interest	327 00	
109 coupons, due Oct. 1, 1888	3,270 00	
Interest	196 20	
99 coupons, due Apr. 1, 1886	2,970 00	
Interest	772 20	
99 coupons, due Oct. 1, 1886	2,970 00	
Interest	653 40	

98 coupons, due Apr., 1885	2,940 00	
Interest	999 60	
98 coupons, due Oct., 1885	2,940 00	
Interest	882 00	
99 coupons, due Apr., 1887	2,970 00	
Interest	534 60	
		133,922 80
To proceeds of 493 coupons and interest thereon which has been placed to the credit of Mrs. C. S. Plumb on her subscription to the capital stock		18,631 80
Balance		$115,291 00

Of the foregoing bonds filed by said Krutz, numbers 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 309, 310, 311, 312, 489, 490, 491, 492, 493, and 494 are registered on the books of the company in the name of C. S. Plumb: the remainder are payable to bearer.

Recapitulation of Amount of Bonds and Coupons Proved and Filed Before the Master and Interest Thereon.

Esther A. Peter	301,952 60
Mrs. M. S. Pomeroy	9,405 00
Justin S. Morrill	12,216 60
J. T. Fitzgerald	20,900 00
John G. Murray	6,335 00
Commercial Bank of Selma	28,215 00
Ala. Nat. Bank of B'h'm	9,405 00
City Nat. Bank of Selma	32,031 60
Samuel Thomas	31,843 80
Calvin S. Brice	3,230 40
George I. Seney	47,176 00
Thomas S. Krutz	115,291 00
	$618,002 00

It further appears that in April, 1882, C. C. Huckabee, Thomas J. Peter, and Robert L. McCalley filed their petition in the probate court of Bibb county, Alabama, among other things declaring their desire to form themselves into a private corporation under the name of the Brierfield Coal and Iron Company, naming Brierfield, in Bibb county, as the principal place of business, and declaring the purposes of the corporation to be the purchase and ownership of lands to be used for mining coal and iron ore and the manufacturing of iron.

And the nature of the business which it proposed to do was to mine and manufacture and buy and sell coal and iron in all their branches.

The stock of said company was fixed at 7,500 shares of $100 each, par value.

Thereupon a commission was issued by the judge of probate of said county to said Huckabee, Peter, and McCalley, constituting them a board of corporators and authorizing them to open books of subscription to the capital stock of the Brierfield Coal and Iron Company, the proposed corporation, and requiring the said board to give one week's notice of the times and places of opening books of subscription by publication in a newspaper published in Bibb county called the Bibb Blade, and by written notice posted at the court-house door, in the town of Centreville, in said county.

The notices required by said order were given in strict conformity thereto.

On the 4th day of May, 1882, the board of corporators made and filed their report in the words and figures as follows:

In accordance with the order of John S. Gardner, judge of probate of Bibb county, in the State of Alabama, to the undersigned as a board of corporators of the Brierfield Coal and Iron Company, the undersigned gave the notice of the times and places of opening the books of subscription to the capital stock of said company, and on the 4th of May, 1882, at the town of Brierfield, opened books of subscription to the capital stock of said company, as follows, and received the following *bona fide* subscriptions:

The undersigned respectively subscribe the amount set opposite their names to the capital stock of the Brierfield Coal and Iron Company, on the terms to be provided by directors:

T. J. Peter	$120,000 00
E. A. Peter	50,000 00
C. S. Plumb	50,000 00
Plumb and Hood	50,000 00
Samuel Tate and associates	75,000 00
Justin S. Morrill	10,000 00
C. C. Huckabee	15,000 00
R. L. McCalley	5,000 00
	$375,000 00

And the said board of corporators further certified to the said probate court that the organization of said company had been completed as required by the statutes in such cases made and provided, and that there had been paid to the president of said company in cash at least 20% of the capital stock subscribed, and that not less than 50% of $750,000.00, the proposed capital stock of said company, had been subscribed by *bona fide* subscribers. This report was subscribed by C. C. Huckabee, T. J. Peter, and R. L. McCalley.

It further appears that on the 5th day of May, 1882, the said probate court of Bibb county ordered and directed a certificate to issue to the said C. C. Huckabee, Thomas J. Peter, and R. L. McCalley, certifying that they had been lawfully organized in accordance with the laws of Alabama as a private corporation under the name and for the purposes indicated in their declaration, and authorizing them to commence business under their charter.

It further appears that the stockholders at their first meeting provided for the election of 5 directors, and the following persons were elected as such directors, namely:

Caswell C. Huckabee.
Amos A. Southwick.
Robert L. McCalley.
John G. Murray.
Thomas J. Peter.

And the following resolution was adopted:

"Resolved, That the directors be required to receive subscription to the capital stock of the Brierfield Coal and Iron Company as follows:

For the purpose of raising the sum of $450,000.00, with which to purchase certain coal and iron properties, to open and operate coal and iron mines, to repair rolling mill, to erect coke ovens and blast furnaces, to produce coal and manufacture coke and iron, to build about 5 miles of railroad track to connect the coal mines, coke ovens, and iron-ore banks with the blast furnace and rolling mill, it is ordered that the directors be authorized to receive subscriptions to the capital stock of said company, and for each $900 paid to said company to deliver to the subscriber $1,000 in a 6 % thirty-year mortgage bond to be made on the property of said company and a like sum of $1,000 of the capital stock of said company."

Subsequently and on the same day the board of directors made and elected Thomas J. Peter president of the company, Amos A. Southwick vice-president, and John G. Murray secretary and auditor, and a motion was carried that the president be authorized to receive subscription to the capital stock of the company upon the terms and conditions directed by the stockholders at their meeting heretofore.

Upon the same day and subsequent thereto appears the following, by Thomas J. Peter, president of said Brierfield Coal and Iron Company:

"In accordance with the resolution adopted by the stockholders of the Brierfield Coal and Iron Company at their meeting held at Brierfield on May 4, 1882, and the directions of the directors of said company, given at their meeting held at the same place on the evening of the same day, I, Thomas J. Peter, president of said company, do now receive subscription to the capital stock of said company upon the following terms, as required so to do by both the stockholders and directors, for the purpose of raising the sum of $450,000.00, with which to purchase certain coal and iron property, to open and operate coal and iron-ore mines, to repair rolling mill, to erect coke ovens and blast furnaces, to produce coal and manufacture coke and iron, to build about 5 miles of railroad track to connect the coal mines, coke ovens, and iron-ore banks with the blast furnace and rolling mill.

Now, therefore, the undersigned agree to pay said company the amounts respectively set opposite our names in such sums and at such times as the directors of said company may require, and to receive from said company for each $900 paid in the sum of $1,000 in a 6% thirty-year mortgage bond of said company and $1,000 in

the capital stock of said company, not more than — per centum of each subscription to be called for during one month.

T. J. Peter and associates	120,000 00
E. A. Peter	50,000 00
R. L. McCalley	5,000 00
C. C. Huckabee	15,000 00
Geo. I. Seney and associates	75,000 00
C. S. Plumb	50,000 00
Plumb and Hood	50,000 00
Justin S. Morrill	10,000 00

The master finds from the testimony that the said Brierfield Coal and Iron Company was duly incorporated and organized under the corporation laws of Alabama for the purposes set forth in their declaration, as appears above, which are in substance the purchase of real and personal property for the production, manufacture, and sale of iron and mining coal and manufacture of coke and the building of railroads to connect the several properties which said company contemplated purchasing at that time, and that all the prerequisites required by the statutes to the full and complete organization of said company were strictly complied —; that the stock of said company was fixed at 7,500 shares of $100 each, and said stock to the amount of $375,000.00 was subscribed by the following-named persons:

T. J. Peter and associates	120,000 00
E. A. Peter	50,000 00
R. L. McCalley	5,000 00
C. C. Huckabee	15,000 00
Geo. I. Seney and associates	75,000 00
C. S. Plumb	50,000 00
Plumb and Hood	50,000 00
Justin S. Morrill	10,000 00

The master further finds that said Thomas J. Peter was authorized by C. S. Plumb to subscribe for the amount subscribed in the name of C. S. Plumb and Plumb and Hood, but that the subscription in fact was made for Mrs. Carrie S. Plumb as an investment for her sole use and benefit, and that she assumed and recognized the said subscriptions, as did also the board of directors of said company.

The master further finds that the resolution passed at the stockholders' meeting on the 4th of May, 1882, set out in full in this report and also adopted by the board of directors at their meeting on the evening of the same day, authorizing and directing the president of the company to receive subscriptions to the capital stock of the Brierfield Coal and Iron Company and for each $900 paid to said company to deliver to such subscriber $1,000 in a 6 % first-mortgage bond upon the property of the company, was an attempt to pay the subscriptions to the capital stock in a way not recognized by the laws of the State and in direct conflict with them.

But it appears from the testimony that this resolution, while acted on in the first instance, was afterwards in fact abandoned by the subscribers to said stock, and that they paid to the company ninety cents on the dollar for each bond received by them, and also made payment on their subscriptions for stock to the amounts hereinbefore reported.

It further appears that on July 6, 1882, a meeting of the board of directors was held at the general office of the company at Brierfield. At said meeting a called meeting of the stockholders was authorized and directed and notice of such meeting, as required by the statutes, was given of the time, place, and the purpose, which was to consider the propriety of placing a mortgage upon the company's property.

And in pursuance of said notice the stockholders did meet on the 25th day of August, 1882, at the general office of the said company in Brierfield, and upon motion the stockholders' meeting adjourned over to the first day of September of the same year.

On the latter date said stockholders convened again at the same place, and after transacting other business authorized a mortgage for five hundred thousand dollars on the property then owned by the company, or which it should afterward acquire, to Preston B. Plumb, trustee, to be executed by the board of directors of the company. This appears to have been done by the unanimous vote of the stockholders at said stockholders' meeting.

A meeting of the board of directors of the company was held on the same day and directed the officers of the company to execute the mortgage or deed of trust authorized and provided for at the stockholders' meeting before referred to.

It further appears that the mortgage or deed of trust was actually executed by T. J. Peter, president, and attested by Jno. G. Murray, secretary and treasurer, under the seal of the company, and was duly acknowledged by said T. J. Peter on the same day, and said trust was accepted by said P. B. Plumb and legally acknowledged by him, and said mortgage or deed of trust was on the 8th day of November, 1882, recorded in the probate office of Bibb county, Alabama.

It further appears that on the 25th day of July, 1882, the board of directors, at the request of the trustee, P. B. Plumb, authorized and directed the president of the company, and under its corporate seal, to execute and attest by him and the secretary of the company a deed of conveyance and further assurance and cause said deed to be duly acknowledged and recorded in accordance with the laws of the State of Alabama, said deed to cover and convey all the property of every kind and description owned or thereafter to be acquired by said company in the State of Alabama and elsewhere, which deed of further assurance appears to have been executed and acknowledged by the officers of the company and under the seal thereof and duly accepted and acknowledged by said Preston B. Plumb on the 28th day of October, 1882, and the same was recorded in the office of the probate court of Bibb county on the 8th day of

Nov., 1882, and in adjoining counties thereto, wherever any of its property was situated.

It further appears that every legal requirement was performed necessary to and in accordance with the laws of the State in that behalf; and the master finds that the mortgages or deeds of trust before referred to were duly and legally executed, and that the bonds and coupons secured by said mortgages or deeds of trust are binding obligations of the company, and as such a lien upon all the property embraced in the deeds of trust to said P. B. Plumb, trustee.

It further appears that the trustee named in the deed of trust, P. B. Plumb, Esq., took possession of the property of the company, through his agent, John G. Murray, Esq., appointed for that purpose, on the 2nd day of August, 1887, and as such trustee managed its affairs until his successor, W. L. Chambers, Esq., was appointed by this court, up to and including November 30, 1887.

The master here submits an account of the receipts and disbursements made by said Plumb through his said agent, John G. Murray, as follows:

Receipts.

1887.		
Month of Aug.:		
Rec'd on ac's B. C. & I. Co.	3,984 78	
From sales at store	7,073 60	
Collections of rents	446 21	
Sales coal, iron, & nails	2,018 29	
Money borrowed from Jno. G. Murray	7,000 00	
		20,522 88
Month of Sept.:		
Sales coal, iron, & nails	12,210 13	
Rec'd from accounts	1,058 55	
From sales at store	6,237 93	
Collections of rents	443 28	
		19,949 89
Month of Oct.:		
Sales coal, iron, & nails	11,727 28	
Sales at store	6,295 35	
Collections of rents	495 13	
		18,517 76
Month of Nov.:		
Sales coal, coke, & iron	12,907 35	
Rec'd from accounts	6,201 56	
Sales at store	6,717 85	
Collections of rents	469 50	
Proceeds trustee certificates	11,567 12	
		37,863 38
Total receipts		$96,853 91

Brought forward		96,853 91
Disbursements		
As per vouchers 1 to 326, inclusive	87,306 58	
Paid on note W. D. & K. Carter, Jr., balance by W. L. Chambers, trustee	474 60	
Paid Memphis Nat. bank proceeds sales nails held by it as collateral to secure indebtedness of the company amounting to $12,200	720 00	
		88,401 18
Balance		$8,452 73

Error in addition of $100 against P. B. Plumb, trustee.

The master has carefully examined the vouchers and finds that they evidence proper and necessary charges against the company in the course of its business, and that the same were paid as they purport to have been paid in the accounts stated by the said trustee.

The master also submitted the accounts of W. L. Chambers, successor to P. B. Plumb, as follows :

1887.			
Dec. 1.	Bal. rec'd from P. B. Plumb	8,352 73	
" 31.	Sales coal, coke, & iron	14,627 36	
	Sales from store	6,592 85	
	Rents collected	286 75	
			29,859 69
1888.			
Jan. 31.	Sales coal, coke, & iron	9,567 11	
	Sales from store	5,957 56	
	Rents collected	481 79	
			16,006 46
Feb. 29.	Sales coal, coke, & iron	12,109 92	
	Sales from store	5,442 17	
	Rents collected	391 69	
			17,943 78
M'ch 31.	Sales coal, coke, & iron	3,200 13	
	Sales from store	6,033 05	
	Rents collected	326 40	
			9,559 58
Apr. 30.	Sales coal, coke, & iron	5,406 25	
	Sales from store	6,440 52	
	Rents collected	454 04	
			12,300 81
May 31.	Old ac's B. C. & I. Co. collected	2,645 95	
	Rents	56 98	
	Sales from store	6,738 88	
	Sales coal, coke, & iron	12,444 77	
	Samuel T. Hooker	2,500 00	
			24,386 58

June 30.	Sales coal, coke, & iron	9,988 01	
	Samuel T. Hooker	2,500 00	
	Sales from store	7,009 73	
	Rents collected	533 85	
			20,031 59
	Carried forward		130,088 49
	Am't brought forward		130,088 49
July 31.	Sales coal, coke, & iron	15,138 72	
	Sales from store	6,771 89	
	Rents collected	378 30	
			22,288 91
Aug. 31.	Sales coal, coke, & nails	10,291 11	
	Sales from store	6,015 70	
	Rents collected	397 90	
	Samuel T. Hooker	3,500 00	
			20,204 71
Sept. 29.	Sales coal, iron, & coke	11,044 73	
	Sales from store	6,083 93	
	Rents collected	382 94	
	Samuel T. Hooker	1,656 01	
	Proceeds sales 41 trustees' certificates, $1,000 each, sold in Feb.	40,025 00	
			59,192 61
Oct. 31.	Sales coal, iron & coke	11,614 61	
	Rents collected	411 10	
	Sales from store	5,803 10	
	Balance in Memphis Nat. bank, proceeds of sales of nails, &c.	3,969 53	
			21,798 34
			$253,573 06
Disbursements as per vouchers 1 to 895, inclusive			245,635 73
The following payments unsupported by receipts the master thinks should be suspended until they are supplied by the trustee:			
Cawthan & Coleman, drugs		8 30	
Linton Sparks, iron ore		44 05	
The master further finds an error in addition of		2 00	
			54 35
Total am't of disbursements			$245,581 38
(Less $54.35 suspended, not being supported by vouchers, & errors in addition.)			
Total receipts			$253,573 06
" disbursements			245,581 38
			$7,991 68

Of which there was deposited in Memphis Nat. bank	3,969 53
Commercial bank of Selma	402 87
In hands W. L. Chambers, trustee	2,216 22
In safe at Brierfield	1,348 71
To be accounted for by trustee	54 35
	$7,991 68

The master has carefully examined the several vouchers in support of the items charged in the trustee's ac., and finds that they are proper charges against the company and that they have been duly receipted by the parties respectively to whom the payments were made.

It further appears that C. C. Huckabee and R. L. McCalley, who are parties defendant to the original bill, have filed their answers thereto, which they pray may be taken and considered a cross-bill in this case. They set up a lien on the 600 acres of land upon which the rolling mill is situated, conveyed by said Huckabee to the Brierfield Coal and Iron Company. Their claim is based on a contract entered into between Thos. J. Peter and themselves, dated Feb. 25, 1882, modified by another agreement between the same parties dated April 2, 1882—Exhibit No. 6.

By the terms of said agreement Huckabee and McCalley sold to said Peter about 600 acres of land upon a portion of which the rolling mill is located, and also about 400 acres of other land conveyed by said Huckabee and McCalley to said company.

Huckabee and McCalley were to receive $25,000.00 cash down and $20,000.00 in the capital stock and bonds of a company to be organized and called the Brierfield Coal and Iron Company. It appears that the legal title to said land and property was in C. C. Huckabee, though McCalley was the equitable owner of one-fourth of it and said Huckabee three-fourths.

It further appears that Huckabee and McCally agreed to subscribe to the capital stock and bonds of said company for the full amount of the balance coming to them after the receipt of the cash payment of $25,000 before mentioned.

The title to the land was not entirely satisfactory to said Peter, and it was stipulated that the Brierfield Coal and Iron Company should retain the securities (stock and bonds) until the titles were made satisfactory to said company.

It further appears that said Huckabee and McCalley joined with said Thos. J. Peter in pursuance of said contract in the formation of the Brierfield Coal and Iron Company, said Huckabee subscribing for $15,000 of the capital stock and R. L. McCalley for $5,000, and that all three of them appear of record as the board of corporators appointed by the probate court of Bibb county to receive subscriptions to the capital stock, and that as such board they certified under their hands to said probate court that 50 % of said subscriptions had been paid.

Subsequently thereto Huckabee and McCalley were elected di-

rectors of the company and said Huckabee has remained in the board of directors up to the present time.

Huckabee produces a receipt, Exhibit No. 5, issued by the Brierfield Coal and Iron Company to him, in words and figures as follows:

"BRIERFIELD, *May 8th*, 1882.

"Received from Caswell C. Huckabee, Esq., the sum of fifteen thousand dollars, being payment in full on his subscription to the capital stock of the Brierfield Coal and Iron Company.

"$15,000.00. T. J. PETER,

"*Pres't B. C. & I. Co.*"

But the proof before the master is no money was actually paid on said subscriptions except by conveyance of the lands and property sold to said Peter upon which a balance of $20,000.00 was still due and unpaid.

A receipt similar to the one produced by Huckabee was issued to R. L. McCalley for $5,000, but said McCalley likewise paid no money. His interest in the balance due on the property sold and conveyed to said company by Huckabee was the only consideration.

The proof further shows that it was the original purpose of the projectors and incorporators of said Brierfield Coal and Iron Company to issue to each subscriber to the capital stock an equal amount in first-mortgage bonds of the company.

To illustrate: A person subscribing for $900 of the capital stock would receive in addition to the stock subscribed for $1,000 of first-mortgage bonds, taking the bonds at 90c. on the dollar.

Because the Brierfield Company refused to issue the stock and bonds in accordance with said contract and agreement, respondents Huckabee and McCalley set up their claim of a lien on the property sold and conveyed by them to the Brierfield Company.

The master is of the opinion, whether the contract be construed to be an agreement whereby each subscriber to the stock was to be given a bond as a bonus or each subscriber to the bonds was to be given paid-up stock as a bonus or an agreement by which each contributor to the capital stock was to receive the obligation of the company secured by a first mortgage on the property, that he should be repaid the amount of his subscription, such a contract would clearly be illegal and void as to existing or subsequent creditors of the company upon the ground that payment of the bonds and stock was unreal and simulated.

Huckabee and McCalley, having subscribed for the stock and bonds $15,000 and $5,000 respectively, are charged with the duty of paying their subscription to the capital stock in cash or property at a fair valuation strictly in accordance with the statutes of the State, and for the bonds subscribed for and received by them should be required to pay the price agreed upon.

McCalley having paid his subscription by conveyance of the property, there is no claim against him on account of his subscription to the capital stock, and his claim of a lien because the company has not issued to him the $5,000 of bonds subscribed for, but

the payment of which he has not tendered, is not well founded and cannot be maintained.

The same rule should apply to Huckabee, but, as he has received both the bonds and the stock subscribed for by him and having paid only for the bonds, the master is of the opinion he should be required to pay on his stock subscription the balance found due as hereinbefore reported.

It further appears that W. D. and K. Carter, Jr., who are parties defendant to this bill, assert a lien on certain property sold by them to the Brierfield Coal and Iron Company under a contract entered into between the Bibb Furnace Company, W. D. & K. Carter, Jr., as shown by Exhibit No-. 8 & 10.

By the terms of the contract the Brierfield Coal and Iron Company was to pay ninety thousand dollars for said property, which embraced all the real and personal property then owned by the said W. D. and Kearsley Carter, Jr., in the county of Bibb, some eight or nine thousand acres of land.

They executed a warranty deed to the property, and, in order to better secure the Brierfield Coal and Iron Company from loss on account of certain suits then pending against them, agreed (Exhibit 9) that said company should retain $1,400.00 until the Carters should make satisfactory title to 280 acres of land which they had not made at that time and which was claimed by other parties.

Also $3,900.00 on account of certain garnishments sued out of the circuit and chancery courts against said company until said garnishments should be discharged; and it appears that the garnishments have been discharged and that said sum retained by the company has not been paid over.

The master finds that the money so retained, $3,900, with interest added from the 9th day of June, 1887, up to the first day of July, 1889, amounting to $4,541.33, is due to Lillian A. Carter, wife of Kearsley Carter, Jr., to whom it was transferred by her said husband, Kearsley Carter, Jr., said Kearsley Carter, Jr., having received the claim in part payment of certain indebtedness to him by his brother W. D. Carter.

The main contention in this matter appears to be whether said W. D. and K. Carter, Jr., were doing business as partners, as they claim, or whether they were joint owners of the property as claimed by the Brierfield Coal and Iron Company.

The contention of the Brierfield Coal and Iron Company is that they were joint owners, not partners, and that W. D. Carter had obtained a large amount of money—namely, about $4,500—from the Brierfield Coal and Iron Company, and that the company should have the right to offset its indebtedness to the amount due from said W. D. Carter.

The master finds from the testimony that W. D. and K. Carter, Jr., were partners doing business under the name of the Bibb Furnace Company; that the notes and mortgage taken and received by them from the Brierfield Coal and Iron Company was their partnership assets; that the indebtedness of W. D. Carter is not subject to the offset claimed, and that the said Lillian A. Carter, transferee,

has a lien upon the property for the unpaid balance hereinabove set forth.

The master further finds that the Carters have failed to perfect the title to the 280 acres of land for which the $1,400.00 was retained, and that they are not in position to ask of the Brierfield Coal and Iron Company payment therefor.

The master further finds that W. D. Carter is indebted to the Brierfield Coal and Iron Company in the sum of about $4,500.00, which was for moneys advanced to him at his request. The dates of the advances are not disclosed by the testimony. That said W. D. Carter has no property which is subject to execution, and that he is insolvent.

It further appears that the Brierfield Coal and Iron Company laid off and platted certain of its lands into lots, as shown by the map of the town of Brierfield, and authorized the president and secretary to sell and convey said lots at such prices as in their judgment it was to the interest of the company; that on the 13th day of April, 1887, the company sold to F. F. Gage the following-described lots or parcels of land: Lots 1 to 15, both inclusive, in block 2; lots 1, 2, 3, 4, 6, 7, 9, 10, in block 24; the whole of block 25; lots 1, 2, 5, 6, 7, 8, 9, in block 3; lots 1, 2, 3, 4, 5, 6, in block 23; lots 1, 2, 3, 6, 7, 8, 9, 10, 11, & 12, in block 22, and lots 8, 9, 10, 11, & 12, in block 18, in all 76 lots, situated in section 30, township 24 north, range 12 east, in the town of Brierfield, Bibb county, Alabama, so numbered on the map of the town of Brierfield as laid out and platted by the Brierfield Coal and Iron Company. The sale was made by authority of the board of directors, and the conveyances were made by said company to said Gage on the 13th day of April, 1887; executed by said company by Thos. J. Peter, who was then its president; attested by Edward T. Peter, sec'y; duly acknowledged on the same day before S. R. Sheppard. The assent and relinquishment of Preston B. Plumb, trustee, to said sale and conveyance was made and given in writing by him and is endorsed on said deed of April 13, 1887. The consideration for said lots was $8,500.00, paid in cash at the time of the delivery of the deed.

On the 13th day of April, 1887, the Brierfield Coal and Iron Company sold and conveyed to Charles L. Bates, of Brierfield, Ala., the following lots, so numbered on the map aforesaid: All of block No. 21; lots 13 & 14, in block 18. Said company executed deed bearing date April 13, 1887; Preston B. Plumb assented to said sale and conveyance and endorsed his assent in writing thereon April 18, 1887. The purchase price of said lots was $600.00, and the same was paid to the said company on the delivery of the deed to said lots.

On April 26, 1887, the Brierfield Coal and Iron Company sold and conveyed to Mrs. Lucy South, of Brierfield, lots No. 10 & 11, in block 3, and executed a conveyance to said Mrs. Lucy South. The price therefor was $600.00.

The company also sold and conveyed to the Methodist Episcopal church of Brierfield lots No. 3 & 4, in block 3, in consideration of $2,

which was paid in cash to the company, and the further consideration that a sightly church building should be erected on said lots within a year, which was done in six months from the delivery of the deed.

The company also sold and conveyed to the Baptist church of Brierfield lots 4 & 5, in block 22, upon the same terms and conditions as above.

The company also sold and conveyed to L. C. Nolen lot No. 5, in block 24, in consideration of $57.00.

Also, to Elizabeth Gage, lot No. 8, block 24, for $66.00.

Also, to the Roman Catholic church of Brierfield, block No. 100, in consideration of one dollar, and the further consideration that a sightly church building should be built on said block within one year, which was done.

It appears that the trustee relinquished on the church lots, but did not relinquish as to any of the other lots, except as hereinbefore stated.

The company sold to the Hematite Club of Brierfield, an organization created for the purpose of cultivating social intercourse and improvements, for and in consideration of its promise to erect a building to be used for the purpose of a public reading-room and general place of amusement and recreation for the members of the club, the following tract or parcel of land: Beginning at the intersection of the public road and the west side of Mahan's creek, in the N. E. ¼ of the S. W. ¼ of section 19, township 24, range 12 E., and bounded as follows: On the east by the creek aforesaid, on the south by the public road, on the west by the right of way of the mine railroad, and on the north by a line parallel to the public road and intersecting the right of way of the mine railroad at a point 200 feet north of the intersection of the public road with said mine railroad.

It appears that the club erected a building on said tract of land, which was the consideration agreed upon, but the Brierfield Coal and Iron Company has failed to execute the conveyance to said club.

It appears further that the cash value of the lot at the time it was donated to the Hematite Club was about $200.00, and that the club have erected a very neat building upon it and made other improvements, which have added greatly to the surrounding property, and which has cost the club about $1,000.00.

The master finds that the said Hematite Club have complied on their part with the terms of the contract, and is entitled to receive a deed in fee simple to the lot or parcel of land contracted for as hereinbefore described.

The company also sold a small strip of land west of the 20th lot, in block 22, and received therefor the sum of one hundred dollars, to Thos. S. Alvis. The purchase-money was paid to the company.

The master finds that the sales of lots as hereinabove set forth were made in good faith, and that the trustee was aware of and concurred in the proposed sales; that the purchasers bought in good

faith and appear to have paid fair prices for the lots, and have otherwise complied with the terms of their contracts, and are entitled to receive their deeds of conveyance.

The master finds that all of the real property described in the deed of further assurance dated July 29, 1887, executed by the Brierfield Coal and Iron Company to P. B. Plumb, trustee, except the lots and parcels of land hereinbefore set forth as having been sold, is now in the possession and under the control of the present trustee, and that the deed of further assurance contains a correct description of the property owned by the company; that the personal property now in the possession and control of the trustee is the same as was described in the deed of further assurance, with the exception of 4 mules, which have been bought by the trustee, one Ingersoll air compresser, 2 rock drills, one steam pump and fittings, which have been purchased since the property went into the hands of the trustee.

The master finds and reports the following liens paid by the trustee out of moneys borrowed by order of the court, namely:

The State of Alabama, for purchase-money on lands in 16th section, $4,031.13.

B. B. Lewis, for purchase-money on certain lands bought from said Lewis, $403.12.

French Nabors, for unpaid purchase-money on land, $1,656.10.

The Baldwin locomotive works, for purchase-money on locomotive No. 2, purchased by the company.

The laborers and operatives had a lien upon the property at the time the trustee was appointed, amounting to about $12,000.00, which was recognized and ordered paid by the court.

The Memphis National Bank of Memphis, Tenn., has a lien on a consignment of 61 kegs of nails to secure a loan by said bank to the Brierfield Coal and Iron Company, amounting to $12,200.00. Part of the nails have been disposed of and the proceeds applied to the debt. The exact amount so applied is not disclosed in the testimony, but it is believed that the nails remaining on hand will yield a sufficient amount to discharge the debt due the bank.

All of the above liens have been discharged by the trustee out of the proceeds of sales of trustee's certificates authorized to be issued by the court, except the last mentioned.

The master further finds and reports the following first liens upon the property of the company as being superior to the bonds and coupons issued under the deed of trust, namely:

52½ trustee's certificates, issued and sold by the trustees under authority of the court	$52,567 12
Money borrowed from Sam'l T. Hooker under order of the court	10,156 01
Interest thereon	749 34

Money borrowed from the First Nat. Bank of Montgomery	$2,000 00
Interest	
	$65,472 47

All of which is respectfully submitted.
July 1, 1889.

J. W. DIMMICK,
Special Master.

Filed the 1st day of July, A. D. 1889.

J. W. DIMMICK, *Clerk.*

UNITED STATES OF AMERICA,
Middle District of Alabama, } ss:

I, J. W. Dimmick, clerk of the circuit court of the United States for the middle district of Alabama, hereby certify that the foregoing pages, numbered from 1 to 60, inclusive, contain a full, true, and complete transcript of the original report of the special master in the case of W. L. Chambers, trustee, *vs.* The Brierfield Coal and Iron Company and others, omitted by mistake from the transcript sent by the clerk of this court to the Supreme Court of the United States in the case of Hollins Sons and Company and others against The Brierfield Coal and Iron Company and others as the same remains on file in my office as such clerk.

Seal of the United States Circuit Court, Middle District of Alabama.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be affixed, at Montgomery, in said district, this 21st day of February, in the year of our Lord one thousand eight hundred and ninety-three.

J. W. DIMMICK,
Clerk U. S. Circuit Court, Mid. Dist. of Alabama.

[Endorsed:] Case No. 13,830. Supreme Court U. S., October term, 1892. Term No., 223. R. S. Hollins, Sr., *et al.*, appellants, *vs.* The Brierfield Coal & Iron Co. *et al.* Writ of certiorari & return. Filed M'ch 27, 1893.

In the Supreme Court of the United States.

No. 223. October, 1892.

R. S. HOLLINS ET AL.

vs.

THE BRIERFIELD COAL AND IRON COMPANY ET AL.

And now come the appellees, The Brierfield Coal and Iron Company and Thomas J. Peter, by William F. Mattingly, their solicitor, and, suggesting to the court that there is a diminution of the record in this cause, in this, that there was omitted from the record, by mistake, the report of the special master in said cause No. 103 in the court below, the record and proceedings in which are part of the record in this cause (R., 253), move the court that the writ of certiorari issue to the clerk of the Circuit Court of the United States for the Middle District of Alabama, to supply said diminution by sending up a transcript of said report of said special master; or, inasmuch as such transcript is now exhibited to the court, and the omission of said report appears therefrom, as also from page 51 of the brief for the appellants, that the court order that said transcript be made a part of the record in this cause. The affidavit of Thomas J. Peter is filed herewith in support of this motion.

Wm. F. Mattingly,
Solicitor for said Appellees.

WASHINGTON, D. C., March 17, 1893.

MR. ALEX. T. LONDON,
Attorney for Appellants,
Birmingham, Ala.

SIR:

You will please take notice that on Monday, the 27th inst., at the opening of the court, or as soon thereafter as counsel can be heard, I will request the action of the court on the foregoing motion. A copy of said affidavit of Thomas J. Peter is sent you herewith.

WM. F. MATTINGLY,
Sol. for said Appellees.

IN THE SUPREME COURT OF THE UNITED STATES

No. 223. October, 1892.

R. S. HOLLINS ET AL.

vs.

THE BRIERFIELD COAL AND IRON CO. ET AL.

I, Thomas J. Peter, upon oath state as follows:

I am one of the defendants and appellees in this cause, and am President of said Coal and Iron Company, also an appellee.

That by stipulation of counsel for the respective parties in the court below, it was agreed that the record and proceedings in the case of W. L. Chambers, Trustee, *vs* The Brierfield Coal and Iron Company, No. 103, in said Circuit Court, might be read in evidence in this cause by any of the parties, subject to objections for irrelevancy (Rec., 178).

Said record and proceedings in said cause No. 103 appear in the record in this cause on page 253 *et seq.*

That in making up the transcript of record in this cause for this court, the clerk of said Circuit Court omitted therefrom by mistake the report of the special master in said cause No. 103. That affiant has in his possession a complete transcript of the report of said special master, duly certified by the clerk of said Circuit Court, and in which said clerk also certifies that the same was omitted by mistake from the transcript of the record in this cause.

That the omission of said report from this record was not known to affiant or his counsel in Alabama until some time last month (February), when said omission was discovered by affiant's counsel in examining a copy of the brief of appellant's attorney, filed herein, in which he

states (p. 51): "The report of the special master appears to have been omitted from the record, but the final decree rendered shows that a report was made (Record, p. 581)."

Affiant's counsel thereupon caused a duly certified transcript of said report to be made out by the clerk of said Circuit Court, which affiant prays leave to submit to this court.

Affiant is advised by counsel that said master's report is most material to the case of the appellees in this court; that the same was used in evidence on final hearing in the court below, and will materially simplify the hearing in this court.

THOMAS J. PETER.

Subscribed and sworn to before me this 17th day of March, A. D. 1892.

[SEAL] ALBERT H. SHILLINGTON,
Notary Public.

A copy of the foregoing motion and affidavit was mailed (registered and duly stamped) to appellant's attorney, this 17th day of March, 1893, addressed "Alexander T. London, Attorney at Law, Birmingham, Ala."

WM. F. MATTINGLY,
Solicitor.

JAN 9 1893
JAMES H. McKENNEY
CLERK.

Supreme Court of the United States.

October Term, 1892.

No. 223.

HOLLINS, SONS & CO. ET ALS.

Appellants,

vs.

THE BRIERFIELD COAL & IRON CO. ET ALS.

Defendants.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

BRIEF OF ALEXANDER T. LONDON FOR APPELLANTS.

ROBERTS & SONS, PRINTERS AND BINDERS, BIRMINGHAM, ALA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

No. 223.

HOLLINS, SONS & CO. ET ALS.

APPELLANTS,

vs.

THE BRIERFIELD COAL & IRON CO. ET ALS.

DEFENDANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

BRIEF OF ALEXANDER T. LONDON FOR APPELLANTS.

STATEMENT OF FACTS.

This was a creditors' bill, filed by the Appellants on behalf of themselves and all others the creditors of the Brierfield Coal and Iron Company, against the Brierfield Coal and Iron Company, Preston B. Plumb, as trustee and individually, and others constituting the stockholders and directors of the Company, certain banks and individuals

who claimed to be holders of bonds, and other persons who claimed certain liens and incumbrances on the estate of the Company.

THE CASE MADE BY THE BILL IS AS FOLLOWS:

The Brierfield Coal and Iron Company was a corporation organized under the general incorporation laws of Alabama, in the month of May, 1882, with a capital stock fixed at seven hundred and fifty thousand dollars ($750,000), and was engaged in the manufacture of iron and nails in Bibb county in the State of Alabama; that during the years 1886 and 1887 the Company became indebted to the complainants. The debt due the complainants, Hollins, Sons & Company, was over five thousand dollars, and the debt due to the other complainants, Fite, Porter, Lyles & Company, was also more than five thousand dollars (Record p. 2).

That fifty per cent. of the capital stock, amounting to three hundred and seventy-five thousand dollars, was subscribed for by the following parties:

Thos. J. Peter and associates	$120,000
E. A. Peter	50,000
R. L. McCalley	5,000
C. C. Huckabee	15,000
G. I. Seney and associates	75,000
C. S. Plumb	50,000
Plumb & Hood	50,000
Justin S. Morrill	10,000

Out of the stock subscribed for by George I. Seney and associates, thirty shares were transferred to Calvin S. Brice, and four hundred shares thereof standing in the name of A. O. Beebe, belonged to Samuel Thomas. That the stock subscribed for in the name of C. S. Plumb and Plumb & Hood was in fact subscribed for by Preston B. Plumb, or by his authority.

The bill averred, on information and belief, that the amounts due on these subscriptions had never been paid, but whether any part had been paid or not, the complainants did not know.

That on the 1st of September, 1882, pursuant to an agreement made by the said stockholders among themselves, the Brierfield Coal and Iron Company executed five hundred thousand dollars of bonds in the sums of one thousand dollars each, dated October 1st, 1882, and payable thirty years thereafter, bearing interest at six per cent., and to secure the payment of these bonds the corporation executed a mortgage to Preston B. Plumb as trustee, on all of its property and effects;

that by the agreement made between the stockholders prior to the organization, it was understood and agreed that these bonds were to be distributed among the stockholders without any consideration according to the amount of stock they might respectively take or hold, or upon some other or different arrangement or agreement of like character, which the complainants allege they were unable to state.

That these bonds, pursuant to the agreement, were distributed among the stockholders without any other or further consideration than the agreement, and that the corporation has received no value for the bonds; that the corporation continued its operations until some time in the month of August, 1887, and during all this time paid to the holders of bonds interest semi-annually; that on the 29th day of July, 1887, the Company executed to Preston B. Plumb as trustee, a further assurance and mortgage on its property and effects, setting out therein the original mortgage, and this further assurance is attached as an exhibit to the bill, Exhibit "A" to the original bill, pp. 9-27. That about the time of the execution and delivery of this further assurance, the Company defaulted in the payment of the interest on the bonds, and on the 1st day of August, 1887, and two days after its execution, the corporation turned over and delivered the whole of its property and effects to the said Plumb as trustee, who took possession thereof through his agent; that on the next day, the 3d of August, 1887, the said Plumb, as trustee, filed his bill in the same court, praying the court to aid him in the administration of the trust, and for other purposes, and thereafter on the 11th day of August, 1887, the Company filed its answer admitting all the allegations of the bill to be true. The original bill filed by Plumb, as trustee, is found in the printed record, page 253, the amendment to this bill on page 273, and an amendment and supplemental bill on page 293

That the Company, after its organization in 1882, became indebted to the complainants and others in about the sum of two hundred thousand dollars; it charges that these bonds and mortgage are fraudulent and void against them and the other creditors of the Company, and charges that the bill filed by P. B. Plumb was for the purpose of hindering and delaying and defrauding the complainants and others, the creditors of said corporation. The bill avers that Plumb was indebted to the Company on his subscription to its capital stock in the sum of fifty-eight thousand dollars; that he was a non-resident of the State of Alabama; that since the 1st of August, 1887, the corporation had ceased to carry on its corporate functions and by the conveyance and surrender of its property and effects had wholly disabled itself from carrying on its corporate functions. Record, p. 5.

The bill then sets out the then holders of the bonds as follows: T. J. Peter, 45 bonds; Esther A. Peter, 245 bonds; Carrie S. Plumb, 100 bonds; Samuel Thomas, 27 bonds; George I. Seney, 40 bonds; C. S. Brice, 3 bonds; Justin S. Morrill, 11 bonds; J. T. Fitzgerald, 13 bonds; John G. Murray, 1 bond; Robert L. McCalley, 5 bonds; Mrs. M. S. Pomeroy, 9 bonds; that the 5 bonds of R. L. McCalley had not been delivered to him by said Brierfield Coal and Iron Company.

In addition to these persons, holders of bonds, the bill alleged that 28 of them had been pledged to the City National Bank of Selma; 26 to the Commercial Bank of Selma, and 9 to the Alabama National Bank at Birmingham, and these several corporations were made defendants. The bill then avers that W. D. and K. Carter claimed a lien on certain property owned and claimed by the Company. It is then alleged that the Company claimed to have invested nine hundred thousand dollars in its plant, but this is denied. It is then averred that the subscribers to the capital stock had never paid the original subscription to the same and were indebted therefor to the corporation, and that the mortgage bonds were issued without any consideration, and that the Company had paid to these stockholders interest on the bonds, from time to time, amounting to about one hundred and fifty thousand dollars. It is further alleged that the property conveyed to the trustee would not be sufficient to pay the amount of the bonds, or in case orators are mistaken in regard to their issue, in that event the only assets which would be available for the payment of the unsecured creditors would be the unpaid stock subscription and such sums as might be due to the Company from other sources. That the Company claimed the unpaid stock subscriptions amounting to about one hundred and twenty-five thousand dollars, and owed about two hundred thousand dollars unsecured debts, and that Plumb denied any liability on account of his subscription to the capital stock.

The bill then avers that unless the affairs of this corporation are placed in the hands of a receiver to collect and distribute its assets, that the entire assets would be wholly lost to the complainants and the other unsecured creditors.

The bill then avers, in the alternative, that if the complainants were mistaken in the allegations in regard to the original issue of the bonds, and that the bonds were issued for a consideration, then, that the bonds were sold at a great deal less than their face value, and that the holders of the bonds, who were also the stockholders, knew this fact, and that the bonds could not be a charge — if a charge at all — beyond what was actually paid for them. It is further alleged that no such notice

as was required by the statutes of Alabama was given prior to the execution of the mortgage, and that the necessary number of stockholders did not vote for its execution.

The bill made defendants, the Brierfield Coal and Iron Company, all of the original stockholders, all of the bondholders, and the banks who were claiming the bonds, and W. D. and K. Carter, who were claiming liens on the property.

The prayer of the bill was that an account might be taken and stated under the directions of the court, to ascertain what sums, if any, were due to the complainants, and such other creditors as might come in and be made parties; that an account might be stated between the Company and the several stockholders, to ascertain how much was due on stock subscriptions; that the mortgages, or deeds of trust, should be declared fraudulent and void against complainants and the other creditors; that they created no lien or charge upon the property of the Company, and that Preston B. Plumb and his agents, and T. J. Peter, who was the President of the Company, might be restrained from interfering with the property, or from further prosecuting the bill filed by said Plumb as such trustee, and concluded with a prayer for general relief. Record p. 8.

Process was issued and executed on the resident defendants, and publication made, as required by law, for the non-residents.

The defendants, except Justin S. Morrill, C. S. Plumb, Preston B. Plumb, M. S. Pomeroy and Laura E. Williams, answered.

The answers of the City National Bank of Selma (Record, p. 39), and the Commercial Bank of Selma (Record, p. 45), are practically the same, except as to the indebtedness and bonds claimed by them respectively. These answers deny any knowledge as to the indebtedness of the complainant, allege the organization of the Brierfield Coal and Iron Company under the general laws, and also by virtue of an act of the General Assembly of Alabama, entitled, "An Act to amend and ratify the charter of the Brierfield Coal and Iron Company of Bibb County, Alabama," approved December 12th, 1884, a copy of which is shown in the record, page 493. These answers then set up that the meeting of the stockholders to authorize the issue of the bonds and the mortgage was called after due notice, as required by law; allege the execution of the bonds and mortgage and the other facts, as stated in the bill (Record, pp. 40, 41); set up that they were bona fide purchasers and holders of the bonds held by them respectively (Record, pp. 42-48; deny that the bonds held by them respectively, or any of them, were issued without consideration; deny that the mortgages were fraudulent or void; deny that it required the consent of two-

thirds of the stockholders to authorize the issue of the bonds, and then aver that all the stockholders were present and authorized the execution of the bonds and mortgage.

James T. Fitzgerald, another holder of bonds, also answered, setting up substantially the same matters of defense as did the other defendants mentioned. Record pp. 52–57.

The creditors answered, claiming their lien under the agreement attached to the original bill as Exhibit "B." Record p. 58.

The defendant, Huckabee, answered, alleging that he had paid his subscription in full. (Record p. 60.) He admits that the bonds issued, except thirteen issued to him, were without consideration. Record pp. 60–61.

Mrs. E. A. Peter answered separately, setting out the manner of the organization of the corporation in substantially the same terms as set out in the answers of the two banks. (Record p. 63.) In section 3 of her answer, she alleges the circumstances in detail under which the bonds and mortgages were authorized to be executed and delivered, and that the authority was conferred by the stockholders' meeting, where all the stock was represented. (Record p. 63.) The execution of the further assurance is also admitted, and the taking possession by Plumb. She admits that she subscribed fifty thousand dollars to the capital stock, but denies any indebtedness therefor. She alleges that she purchased the bonds held by her at ninety cents on the dollar, and paid this sum therefor. (Sec. 7, Record p. 65.) She claimed that she acquired the bonds in good faith for valuable consideration, without any notice or knowledge of any defect or fraud concerning their issue, and insisted that the mortgage and further assurance were a first lien on all the property of the Brierfield Coal and Iron Company, including "all amounts and balances due from its stockholders on account of unpaid subscriptions to the capital stock thereof." (Sec. 8, Record p. 66) She then denies that the bonds or mortgages were fraudulent, and alleges that the same were authorized by the unanimous vote, after due notice, of all the stockholders.

The answer of T. J. Peter, who was the husband of E. A. Peter, is substantially the same as his wife's, except section 7, Record, p. 71, wherein he sets out the amount of stock subscribed for himself, and the number of bonds held by him. The original bill alleges that T. J. Peter and Esther A. Peter, his wife, were resident citizens of the State of Alabama. (Record pp. 1–2.) And this allegation is not denied by either defendant.

John G. Murray answered, claiming he owned eight bonds *bona fide*, setting out the organization of the corporation and the manner of the

execution and issue of the bonds and mortgages, as did the other defendants. Record pp. 73–79.

The answers of the two banks, and each of the individual defendants, except W. D. and K. Carter, and C. C. Huckabee, contain the following paragraph:

> "And this defendant is advised by counsel, and believes and avers, that by reason of the premises and the terms, provisions, operation, and effect of the said mortgage deeds of trust, all of the property of said Brierfield Coal and Iron Company, real and personal, both that owned by it at the date of the said original mortgage deed of trust and that since acquired, including choses in action, rights, franchises and credits, balances due on unpaid subscriptions to capital stock, and all items and things whatsoever of value, is granted, conveyed and pledged to said trustee, and his successor or successors in the trust, as a trust fund to secure the payment of said first mortgage bonds, according to the tenor and effect thereof."

Answer City National Bank, Sec. 6, Record pp. 41–42.
" Commercial Bank, Sec. 6, Record p. 48.
" J. T. Fitzgerald, Sec. 6, Record pp. 54–55.
" Esther A. Peter, Sec. 6, Record pp. 64–65.
" Thomas J. Peter, Sec. 6, Record pp. 70–71.
" John G. Murray, Sec. 5, Record p. 76.
" Seney, Thomas and Brice, Sec. 6, Record p. 99.

The Brierfield Coal and Iron Company filed a separate answer, neither admitting nor denying the complainants' debt, setting up its organization under the general laws and alleging the amendment to its charter, which was heretofore referred to.

The subscription agreement and payments thereon are alleged as follows:

> "That in accordance with the rights conferred on it by law it regularly opened its books of subscription to its capital stock, and that the subscriptions to the capital stock of said Company were as follows:

T. J. Peter and associates	$120,000.00
E. A. Peter	50,000.00
R. L. McCalley	5,000.00
C. C. Huckabee	15,000.00
G. I. Seney and associates	75,000.00
C. S. Plumb	50,000.00
Plumb & Hood	50,000.00
Justin S. Morrill	10,000.00

That on said stock subscription T. J. Peter paid to said Company the sum of $83,640.85, and became surety for said Company, for money borrowed for the use of said Company and actually used in its business, as accommodation indorser, for the sum of $102,417.60; that E. A. Peter paid in cash $50,000, the full amount of her subscription to the capital stock; that said R. L. McCalley has paid in property the sum of five thousand dollars on his subscription to the said capital stock; that the said C. C. Huckabee has paid in property the sum of $2,166.00 on his subscription to the capital stock of said Company; that on the subscription to the capital stock subscribed in the name of G. I. Seney and associates there has been paid to said Company the sum of $23,745.00 by Samuel Thomas, and the sum of eight hundred and ten dollars by Calvin S. Brice, and the sum of $22,800.00 by G. I. Seney.

That on the subscription to the capital stock made in the name of *C. S. Plumb* and *Plumb & Hood* there has been paid to said Company the sum of $43,089.78 *by C. S. Plumb;* that on the subscription of Justin S. Morrill made to the capital stock of said Company there has been paid to said Company the sum of $6,270.00.

That after the organization of said Company John G. Murray purchased six shares of the capital stock of said Company, and paid said Company therefor the sum of six hundred dollars in cash." Record, p. 81.

It then sets up the manner in which the bonds and mortgage were authorized to be issued, and that the same was done by the vote of all of the stockholders held at a meeting called after due notice according to law. Sec. 3, Record pp. 81, 82.

It then alleges that—

"Said bonds bonds were sold for cash to the following parties, and in the following amounts, for not less than ninety per centum of their par value and the accrued interest, which money was received by the Brierfield Coal and Iron Company and used in the purchase and development of this property, and in its legitimate business, namely:

Thomas J. Peter, seventy-one (71) bonds; Esther A. Peter, two hundred and fifteen (215) bonds; Carrie S. Plumb, ninety-nine (99) bonds; Justin S. Morrill, eleven (11) bonds; Samuel Thomas, forty (40) bonds; G. I. Seney, forty (40) bonds; Calvin S. Brice, three (3)

bonds; John G. Murray, one (1) bond; C. C. Huckabee, thirteen (13) bonds.

> There were seven bonds unsold, which were delivered to John G. Murray as collateral for two loans of twenty-five hundred dollars each, made by him from the Commercial Bank of Selma, which money was received by the Brierfield Coal and Iron Company, and used in its legitimate business." Record p. 83.

The execution of the further assurance, and the demand for possession by Plumb are then admitted. Sec. 5, 6, pp. 83, 84.

It denies that the bonds issued or the mortgages executed were in any manner fraudulent, but were *bona fide* and made upon full and valuable consideration.

It is not denied that the company answered the bill of Preston B. Plumb, as trustee, admitting all of its allegations.

The original bill in this cause was filed on the 28th of October, 1887, and on the 21st of November, 1887, Preston B. Plumb resigned as trustee, and W. L. Chambers was substituted as trustee by an order of court. Record p. 337.

On the 3rd of January, 1888, W. L. Chambers, who was substituted trustee, was, on his own application, made a defendant in this cause. Record pp. 79–80.

The Company does not deny that the subscriptions made in the name of Carrie S. Plumb and Plumb & Hood were in fact made by Preston B. Plumb, as alleged in the bill. Record p. 3.

None of the answers set up that there were two subscription lists, or that stock was issued under the second list.

Chambers answered, setting up practically the same defence as the other defendants, and denying that Plumb owed anything on account of his subscription. Record, p. 88.

The bill was taken as confessed against Seney, Thomas and Brice, but they afterwards answered, admitting that they were owners of the capital stock of the defendant company, as follows:

> George I. Seney, four hundred shares.
> Samuel Thomas, four hundred shares.
> C. S. Brice, thirty shares.

And admitting that they had paid thereon sums as follows:

> George I. Seney, $22,800.
> Samuel Thomas, $23,745.
> C. S. Brice, $810.

Alleging that they had bought eighty-three of the first mortgage bonds in good faith, denying that they were liable for any payments

on their stock, but insisting that in case it should be determined that they were so liable that this lien should be credited upon the amount due them on the bonds. Section 7 and 8, Record pp. 99-100.

The other defendants, P. B. Plumb, C. S. Plumb, Justin S. Morroll, M. S. Pomeroy, and Laura E. Williams, who were made defendants by publication under the provisions of the act of Congress, neither appeared nor answered, and on proof of the publication, the bill was taken as confessed as to them. Record p. 95.

The complainants examined Thomas J. Peter as a witness. He was the original moving spirit in the organization of the Brierfield Coal and Iron Company, and upon its organization was elected its president, and continued as such president up to the time that Mr. Plumb, as trustee under the deed of trust and further assurance, took possession of the property, and also examined John G. Murray, who was the original secretary of the Company, and continued such until the Company ceased operations, when he became the agent of the trustee, and as such agent took possession of the property and assets of the Compony.

The records and minute book of the Brierfield Coal and Iron Company were offered in evidence, including the original books of subscription. What is termed the Records, is to be found on pages 190–196. The Minute Book is shown in the record pp. 550–560.

CONSTITUTION AND STATUTES OF ALABAMA.

The Brierfield Coal and Iron Company was organized under the following statutes of the State of Alabama, which were then in force (Code of Alabama (1876), Part 2, Title 1, Chapter 1, Article 1):

SECTION 1803. *Declarations Filed with Probate Court: Contents.* Two or more persons desiring to form themselves into a private corporation for the purpose of carrying on any manufacturing, mining, immigration or industrial business in this State, may file with the Probate Court of the county in which it is proposed that such company shall have its only or principal place of business, a written declaration, signed by themselves, setting forth forth—

1. The names and residences of the petitioners.
2. The name of the proposed corporation; the place at which it proposes to have its principal or only place of business; the general purpose of the corporation, and the nature of the business it proposes to do.
3. The amount of the capital stock, and the number of shares into which it is to be divided.
4. Any other matters which it may be desirable to set forth in the organic law.

SEC. 1804. *Commission Issued to Board of Corporators. Books of Subscription: When and Where Opened.*—Upon the filing of the declaration, as above, the Probate Judge of the county shall issue to the parties, or to any two or more of them, a commission constituting them a board of corporators, giving them authority to open books of subscription to the capital stock of the proposed company, requiring them to give such notice, as he may deem fit, of the names and places of the opening of the books of subscription.

SEC. 1805. *Subscriptions: How Payable.*—All subscriptions to the capital stock of any company organized, or proposed to be organized, under the provisions of this article shall be made payable in money, or in labor or property at its money value, to be named in the list of subscription, and in case of a failure to perform the labor, or deliver the property, according to the terms of the subscription, the money value thereof, as named in the lists of subscription, shall be paid by the subscribers.

SEC. 1806. *Company: When and How Organized.*—When not less than fifty per cent. of the proposed capital stock has been subscribed by *bona fide* subscribers, the board of corporators shall call the subscribers together, a majority of whom, in value, being present, either in person or by proxy, shall proceed to the organizntion of the company by the election of a board of directors, from among themselves, of not less than three nor more than nine members, to manage the affairs and business of the Company for the ensuing twelve months, or until their successors are duly elected and qualified. The board of directors thus elected shall elect a president or executive officer from their own number, and they shall also elect such person as they may see fit as secretary, both to serve for such time and under such conditions as the Company may determine in their by-laws.

SEC. 1807. *Certificate of Organization.*—Upon the completion of the organization of the Company, and the payment to the treasurer of the Company, or some other officer designated for that purpose, in cash at least twenty per cent. of the capital subscribed, the board of corporators shall, in writing and over their signatures, certify the same to the Probate Judge of the county, who shall issue to the company a certificate that they have been fully organized according to the laws of Alabama, under the name and for the purposes indicated in their written declaration, and that they are fully authorized to commence business under their charter.

SEC. 1808. *Corporators After Organization Transfer to Company.* Upon the issuance of the certificate of incorporation by the Probate Judge, the board of corporators shall turn over to the Company the

money, subscription lists, notes, obligations, or other papers, they may have taken as corporators in the formation of the Company, and henceforth all such money, lists, notes, obligations, or other papers, shall belong to and be the property of the Company, and shall be as binding on the company as if taken and made by themselves.

SEC. 1809. *Record Kept by Probate Judge.*—The application, orders, returns and certificates relating to the organization of the company shall be recorded in a book kept by the Probate Judge for such purpose, and for all such certificates, orders, transcripts and records, the Probate Judge shall be entitled to such fees as are allowed by law in other cases for like services.

SEC. 1810. *General Powers.*—Among the powers of such bodies corporate shall be the following:

1. To have perpetual succession.
2. To sue and be sued by the corporate name.
3. To have a common seal, and to alter the same at pleasure.
4. To render the shares or interests of the stockholders transferable, and to prescribe the mode of making such transfers.
5. To exempt the private property of the members from liability for corporate debts, except for unpaid installments, and to prescribe the time and manner of paying installments for subscriptions of the capital stock of the Company.
6. To make contracts, acquire and transfer property, both real and personal, possessing the same powers in such respects as individuals now enjoy.
7. To establish by-laws, and make all rules and regulations deemed expedient for the management of their affairs not inconsistent with the Constitution and laws of this State or the United States.

SEC. 1811. *How Capital Stock may be Increased.*—Any company organized under the provisions of this article may increase its capital stock to an amount not exceeding one million dollars by giving each stockholder the preference of taking the increase in proportion to the amount of the original stock he may own, by a vote of two-thirds of the stock in value, had at a meeting called for the purpose, by and in pursuance of a notice given for thirty days in some newspaper published in the county where the company has its principal place of business, or where no paper is published in the county, by notice posted up at the court-house door for a like period, giving the time, place and purpose of the meeting of stockholders.

SEC. 1812. *May Borrow Money and Execute Mortgages.*—Any company organized under the provisions of this article may borrow

money for the purpose of carrying out the objects of its charter, and may make notes, bonds, or other evidences of debt, and by a vote of a majority of the stock, had at a meeting called for the purpose by advertisement, as provided above in the preceding section of this article, may secure the payment of said notes, bonds, or other evidences of debt, by mortgage or deed of trust on any or all of their property, both real and personal; but in no case shall the debts thus created and secured exceed two-thirds of the amount of the capital stock, unless the capital stock is all paid, then such secured debt may be to the extent of the capital stock.

In addition to the foregoing provisions, this chapter of the Code of 1876 contains the following provisions, which are pertinent to this cause:

SECTION 2035. *Increase Void Unless for Value.*—Neither stocks nor bonds shall be issued by any private corporation, except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void.

Section 6, Article XIV. of the present Constitution of Alabama, in force in May, 1882, is as follows:

SECTION 6. No corporation shall issue stock or bonds except for money, or labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general laws, nor without the consent of the persons holding the larger amount in value of stock, first obtained at a meeting to be held after thirty days' notice given in pursuance of law.

Constitution of Alabama, 1875.

THE CASE MADE BY THE EVIDENCE — THE ORGANIZATION OF THE COMPANY.

This being the state of the statutory law in Alabama, C. C. Huckabee, Thomas J. Peter, and Robert L. McCalley filed in the Probate Court of Bibb County, in April Term, 1882, a petition declaring their desire to form themselves into a private corporation, to be known as the Brierfield Coal and Iron Company, with its principal place of business at Brierfield, in Bibb County, in the State of Alabama; that the general purpose of the corporation was to purchase and own lands, to be used in mining coal and iron ore and manufacturing iron, and the nature of its business was to mine and manufacture, buy and sell coal and iron in all its branches; the capital stock to be seven hundred and

fifty thousand dollars, divided in seven thousand five hundred shares of the par value of one hundred dollars per share, and prayed that a commission might issue constituting them a board of corporators, and giving them authority to open books of subscription to the capital stock of the proposed corporation. The declaration is set out in the record, page 550. And thereupon the Judge of Probate of Bibb County issued the commission to the said Huckabee, Peter, and McCalley, authorizing them to open books of subscription to the capital stock. Record pp. 552–553.

The Board of Corporators reported that, after giving the notice as required by the commission, they had opened books of subscription, and that not less than fifty per cent. of the proposed capital stock of seven hundred and fifty thousand dollars had been subscribed by *bona fide* subscribers; and this is hereinafter designated the original subscription list. Record p. 554.

They further reported that the company had been organized by the election of a board of five directors, consisting of C. C. Huckabee, Amos R. Southwick, Robert L. McCalley, John G. Murray, and Thomas J. Peter. Upon the filing of this report, the Judge of Probate of Bibb County issued a certificate of incorporation to the Brierfield Coal and Iron Company, on the 4th day of May, 1882. The certificate is to be found on page 555 of the record; the report of the Board of Corporators on pages 557–558. At this organization meeting the stockholders, on motion of T. J. Peter, adopted the resolution which is set out in the second subscription list, which follows. Record p. 557.

THE SUBSCRIPTION AGREEMENTS.

The undisputed evidence shows that there were two subscription agreements. The first or original agreement is shown to be as follows, by T. J. Peter, one of the Board of Corporators:

> The original subscription is on page 11 of this book (reading therefrom): In accordance with the order of John S. Gardner, Esq., Judge of Probate of Bibb County, in the State of Alabama, to the undersigned "as a Board of Corporators" of the "Brierfield Coal and Iron Company," the undersigned gave the notice of the times and places of opening the books of subscription to the capital stock of the said Company, and on May 4, 1882, at the village of Brierfield, opened books of subscription to the capital stock of said Company as follows, and received the following *bona fide* subscriptions:
>
> The undersigned respectively subscribe the amounts set opposite their names to the capital stock of the Brierfield Coal

and Iron Company, on the terms to be provided by the Board of Directors:

T. J. Peter, one hundred and twenty thousand dollars.

E. A. Peter, fifty thousand dollars.

C. S. Plumb, fifty thousand dollars.

Plumb & Hood, fifty thousand dollars.

Samuel Thomas and associates, seventy-five thousand dollars

Justin S. Morrill, ten thousand dollars.

C. C. Huckabee, fifteen thousand dollars.

R. L. McCalley, five thousand dollars.

I made all the subscriptions there except Mr. Huckabee's and Mr. McCalley's, who made them for themselves, I being authorized to make the subscriptions at that time; and afterwards, for fear some question might arise, I drew up the subscription as of that date — the same date as that of page 23 — and except Mrs. E. A. Peter, whose name I signed, all the others subscribed for themselves.

Minutes, record p. 554.

Record pp. 165–166.

This was the agreement reported to the Judge of Probate, Mr. Peter says, in answer to the question:

Q. The subscription list on page 11 was the one that was reported to the Probate Judge?

A. Yes, sir.

Record p. 166.

After the organization of the company the second subscription agreement, on pages 23 and 24, and shown in the testimony of T. J. Peter (record pp. 164–165, and in the minutes record pp. 558–559), was signed, and is as follows:

In accordance with the resolution adopted by the stockholders of the Brierfield Coal and Iron Company, held at Brierfield on May 4, 1882, and the directions of the Directors, held at the same place on the evening of the same day, I, T. J. Peter, President of said Company, do now receive subscriptions to the capital stock of said Company upon the following terms, as required so to do, both by the stockholders and directors:

For the purpose of raising the sum of four hundred and fifty thousand dollars, with which to purchase certain coal and iron properties, to open and operate coal and iron-ore mines, to repair rolling mill, to erect coke ovens and blast furnace, to produce coal and manufacture coke and iron, to build about five miles of railroad tracks to connect the coal mines, coke ovens,

and iron-ore tanks with the blast furnace and rolling mill:

Now, therefore, the undersigned agree to pay to said Company the amounts respectively set opposite our names, in such sums and at such times as the directors of said Company may require, and to receive from said Company, for each nine hundred dollars paid in, the sum of one thousand dollars, in a six per cent. mortgage bond of said Company, and nine hundred dollars in the capital stock of said Company.

Not more than — per centum of each subscription to be called for during one month.

T. J. Peter and associates, one hundred and twenty thousand dollars.

E. A. Peter fifty thousand dollars.

R. L. McCalley, five thousand dollars.

C. C. Huckabee, fifteen thousand dollars.

G. I. Seney and associates, seventy-five thousand dollars.

L. S. Plumb, fifty thousand dollars.

Plumb & Hood, fifty thousand dollars.

Justin S. Morrill, ten thousand dollars.

Record, pp. 558, 559.

The name L. S. Plumb is a manifest clerical error and should be C. S. Plumb.

In reference to when this second agreement was signed the evidence of Mr. Peter is as follows:

Q. The other subscription on page 23 you afterwards prepared yourself, and it was signed by the parties?

A. Except Mrs. Peter, whose name I signed.

Q. That was subsequent to the organization of the company?

A. Yes, sir; although made as of the same date, both of May 4th.

Q. The second subscription list was made after the company had been organized?

A. Yes, sir.

Record, p. 166.

Again, on pages 242, 243 of the record, he says:

Q. Can you tell by looking at that book—the subscription book—what the date of that agreement was in regard to the stock and bonds?

A. The date is there. Here is the resolution of subscription; no date to it. Here is the second subscription. I can't tell. It was done in a short time—about the same time these other

things were done. At first these gentlemen had authorized me to sign their names, but afterwards, for the sake of better protection, I thought it better to have them sign it again. I went East about this time, and then had them to make their subscriptions over again.

Q. That was after May 4th?

A. I think it was.

Q. What is the date of the certificate of the Judge of Probate.

A. May 5th. It was, then, after May 5, 1882.

Q. It was after the Company had been organized?

A. Yes, sir; I think it was. I think so from the manner in which it comes in here.

Q. Didn't you go East after the Company was organized?

A. Yes, sir; I think it was subsequent to the 4th day of May, 1882. I think I went directly East and got the subscriptions.

Q. This subscription referred to is the one set out in his deposition found in the examination of T. J. Peter on March 12, 1889?

Deposition of Peter, record pp. 242–243.

ISSUE OF STOCK AND BONDS.

It was contemplated by the subscribers that they were to receive bonds at ninety per cent. for the amount of their subscriptions and the stock was to begin as a bonus, and this was carried out.

Mr. Peter, in answer to the question: Q. "Were stock and bonds issued to the several subscribers, and their issuance according to the second subscription paper?" says:

A. "Yes, sir; as they paid their money in."

Q. "Have any certificates of stock been issued to the parties who have not paid in their full subscriptions?"

A. "Yes, sir."

Record p. 166.

In answer to the question as to when calls were made, he says:

A. No; the records of the Company only show when the calls were made, after they had paid and received their bonds. You understand, the theory was that they were to receive bonds and stock as they made paymen—tas they made payment up to the sum of four hundred and fifty thousand dollars—and twenty per cent. in addition—they received stock and bonds.

It was then found that there was not money enough to carry out our plans, and an additional amount was called for by the Board of Directors on the stock, and the records show these additional amounts that were called for.

Q. Then, in the original organization, it was contemplated that stockholders should receive bonds and stock on the subscription that was made?

A. That was the expectation of the subscribers to the stock.

Q. What was that expectation?

A. That they would receive bonds and stock — in other words, that for every thousand dollars paid in, they were to receive a thousand dollars in bonds and nine hundred dollars in stock.

Q. Please look at the records shown you on page 26, at the bottom. Is that the first assessment that was ever levied on the stock?

A. It was the first assessment that was ever levied over and above the ninety per cent.

Q. For the ninety per cent. of which you speak, bonds were issued, were they not?

A. Bonds and stock were issued for it at the same time.

Q. For the ninety per cent. paid in, then, and the twenty per cent. paid in, bonds and stock were both issued?

A. Yes.

Q. Was the ninety per cent. paid in prior to the issue of the bonds?

A. A good deal of it was, and money was paid in before any bonds or stock was issued to the stockholders, and after the bonds were issued, bonds and stock were issued to the stockholders for the amount of money paid in, and as they made payments afterwards bonds and stock were issued in proportion to their payments.

Q. These issues of stock and bonds were in the proportion that you have stated — nine hundred dollars of stock and one thousand dollars of bonds for each one thousand dollars paid in?

A. Yes, sir.

Q. Do the books of the Company show how much money had been paid in by the subscribers before the issue of the bonds?

A. Yes, sir; I think they will.

Q. At the time the bonds were issued, or authorized to be

issued, the bondholders and stockholders were the same persons, were they not?

A. Yes, sir.

Q. And the bonds authorized to be issued were issued to the subscribers to the stock in the manner that you have stated?

A. Were issued to the subscribers in the manner that I have stated; yes, sir.

Q. When was the first assessment levied on the stock?

Record pp. 182, 183, 184.

James G. Murray, the Secretary of the Company, in his deposition, taken in the cause of P. B. Plumb, Trustee, vs. Brierfield Coal and Iron Company, and introduced by consent in this cause, makes the transaction perfectly plain. I quote from the record, pages 422–423:

"When stock and bonds were first issued, there were issued for every nine hundred dollars paid, one first-mortgage bond and ten shares of the capital stock of the Brierfield Coal and Iron Company. No shares of stock were issued to Huckabee. No bonds were issued to McCalley, and no stock. I said he had paid five thousand dollars in to the Company. The five thousand dollars due McCalley was considered cash also paid to Huckabee, and has never been paid to Huckabee, except fifteen thousand dollars less expenses and the credit to McCalley. I have made a complete statement of everything that has been paid upon bonds and stock. When bonds and stock were originally issued, there were issued for every nine hundred dollars received in cash, one first-mortgage bond and ten shares of capital stock of the Company. There was afterwards paid on calls of the Company, at different times, about fifty-seven per cent. upon the stock issued in the manner as stated heretofore, and the exact amount paid by each stockholder I have already given. The following is a copy of the first stock issued:

No. 1. Brierfield Coal and Iron Company. Shares $100 Each. Capital, $750,000. This is to certify that Esther A. Peter is the owner of one hundred and fifty full-paid shares, of $100 each, in the capital stock of the Brierfield Coal and Iron Company of Alabama, transferable only on the books of the corporation, in person or by attorney, in accordance with the by-laws of said corporation, and on surrender of this certificate.

In witness whereof, the seal of the corporation and the signatures of the President and Secretary are hereunto affixed.
Brierfield, Ala., October 9, 1882.

(Signed) T. J. PETER, President.

[SEAL.]

Attest: JOHN G. MURRAY, Secretary.

A certificate similar to this for ten shares was issued to each subscriber upon payment of nine hundred dollars, and as given one bond. Some of the original certificates are outstanding. The new certificates are in the same form as the old ones. Every stockholder recognized the fact that when the call was made he owed the money upon the stock issued, by paying the assessment as the Company made the call. There has been no written agreement of subscriptions other than the first one. The amounts paid by subscribers amount to ninety per cent. on the bonds. The additional amounts, as testified to by me, as heretofore, was paid upon stock upon the books of the Company."

I have quoted at length from the testimony of these two witnesses, which is uncontradicted, to show the original agreement between the stockholders, and the manner it was carried out. All of the bonds, with the exception of *seven*, were issued under this agreement, and the whole of the stock issued was issued under it.

ISSUE OF STOCK.

Mr. Murray, testifying on the reference in the case of P. B. Plumb, Trustee, vs. Brierfield Coal and Iron Company, on July 25, 1888, says:

"The present owners of stock are as follows:

T. J. Peter holds	1 share
C. L. Bates	1 share
E. T. Peter	1 share
E. T. Peter, trustee for E. A. Peter	697 shares
Laura E. Williams	500 shares
Esther A. Peter	500 shares
Mrs. C. S. Plumb	990 shares
A. O. Bebee	800 shares
Calvin S. Brice	30 shares
Justin S. Morrill	110 shares
John G. Murray	6 shares
Making the total outstanding shares	3636

Record p. 406.

In addition these shares eleven hundred and sixty shares, which were included in Certificate No. 36, stood on the books until July 29, 1887, in the name of T. J. Peter, trustee, and four shares, which were included in Certificate No. 31, stood on the books until that day in the name of John G. Murray, when they were surrendered to the Company. Adding these to the shares stated above, and we have the total outstanding stock on July 29, 1887, 4,800 shares. The surrender of these shares will be referred to hereafter.

The whole of the stock certificate book will be found in the record, marg. pp. 1127–1173, both inclusive.

PAYMENTS ON STOCK.

For this stock issued, the evidence shows that the stockholders were credited on their accounts with $235,955.63. Mr. Murray says (record, page 153):

> A. The amount paid by George I. Seney was $22,800, and of that amount $7,200 was coupons; Mrs. E. A. Peter, $50,000, paid in cash; Justin S. Morrill, $6,270, $990 of which was paid in coupons; R. L. McCalley, $5,000, which was paid in cash. It was credited to him as a cash payment. It is explained in this testimony here (referring to his depositions in the case of W. L. Chambers, trustee, against the Brierfield Coal and Iron Company). C. C. Huckabee, $2,166, all of which was paid in coupons. John G. Murray paid for stock $600, $240 of which was paid in coupons. T. J. Peter, $83,640.85, $35,880 of which was paid in coupons. Mrs. C. S. Plumb paid $43,089.78, $7,260 of which was paid in coupons. Samuel Thomas paid $23,745, $9,600 of which was paid in coupons. C. S. Brice paid $810, $540 of which was paid in coupons.

AMOUNT OF COUPONS CREDITED TO STOCK SUBSCRIPTIONS.

For convenience, I insert Mr. Murray's statement, showing in detail the amount of interest coupons included in these credits, which will be found on pages 151 and 152 of the record:

> Q. Please give the names of the persons and the amounts paid or credited on subscription account of interest coupons, and also name the amount each stockholder to whom interest coupons were paid in cash.
>
> A. I will first state the amount of interest coupons credited to stock subscriptions on account of interest on first-mortgage bonds:

Justin S. Morrill	$990 00
C. C. Huckabee	2,166 00
George I. Seney	7,200 00
T. J. Peter	35,880 00
Mrs. C. S. Plumb	7,260 00
John G. Murray	240 00
Samuel Thomas	9,600 00
C. S. Brice	540 00
	$63,876 00

AMOUNT OF DISCOUNT AND INTEREST CREDITED TO SUBSCRIPTIONS.

In addition to this amount credited, the accounts of the several subscribers show that the following sums were credited to their accounts as discount on the bonds issued to them, respectively, and as interest on the amounts paid in by them from dates of payment:

SUBSCRIBERS.	INTEREST.	DISCOUNT.	REMARKS.
Justin S. Morrill	$140 83	$1,100 00	Record p. 598
John G. Murray		100 00	Record p. 599
Mrs. C. S. Plumb	3,478 42	9,300 00	Record p. 600
Mrs. E. A. Peter, T. J. Peter	631 39	28,000 00	Record pp. 601–602
Samuel Thomas	341 42	8,300 00	Record p. 602
Totals	$4,592 06	$46,800 00	
Total Interest and Discount			$51,392 06

In addition to these amounts, Mrs. Peter was credited with interest amounting to five thousand dollars on a note of the Company's not shown in the accounts.

Deposition of T. J. Peter, record p. 241.

The coupons were credited under the terms of the resolution of the Board of Directors, adopted at the meeting held January 1, 1886, and under which the thirty per cent. assessment was levied.

Record p. 191.

The discounts are explained by Mr. Murray. Record pp. 224–225. The subscribers were charged with bonds at their face value and then credited with ten per cent. discount. The interest credited was the interest which was allowed on payments made by subscribers from

the time they were made until October 1, 1882, when the bonds began to draw interest.

Record p. 226; record p. 180.

It thus appears that of this sum of		$235,955 63
There was paid in coupons from the bonds	$63,876 00	
By discount and interest	56,392 00	
A total of		120,268 00
Leaving the whole amount realized by the Company from stock subscribed for and issued		$115,687 63

STOCK ACCOUNTS.

There was no separate account for stock subscriptions, the entries in all cases being a charge of bonds.

Mr. Murray, the Secretary, testifies that the only means of ascertaining the state of the account of any stockholder was by taking the stock certificate book as a debit and deducting therefrom the amount of credits placed to the account of each stockholder.

I quote from the record, pages 232 and 233, where he explains how the accounts were kept:

Q. Are the amounts credited to the stockholders in addition to the amounts they paid for their bonds?

A. Yes, sir.

(London moved to exclude that answer, and objected to the question on the ground of irrelevancy and illegality.)

A. The stock is not charged in the account where the credit is given. The stock-certificate book is a part of the accounts. That is a charge against them for that stock.

Q. You kept stock account on the debit side by that stock-certificate book?

A. Yes, sir; there never was any other debit account of stock, because the stock having received credit, the accounts to which the money went were charged, and the balance kept in the books.

Q. The stock-certificate book is a part of the account of the stockholder?

A. It shows every certificate of stock issued.

Q. Does the stock-certificate book show the amount due by the several stockholders?

A. No, sir; I don't think it does.

Q. Where is the place in the books that does?

A. It is the difference between the two—difference between the credits and the subscription.

Q. Does it show the amount of the debit?

A. It shows the stock issued to them.

Q. Does it show the amount they owed for stock?

A. I don't think it does.

Q. You have stated a number of times that the stock-certificate book is a part of the books of the Company in ascertaining the accounts of the stockholders?

A. Yes, sir.

Q. Does that stock-certificate book show the amount that would be due by the stockholders, less the credits on the ledger?

A. Yes, sir; I think it does.

Q. When I speak of debits, I don't mean the balance; I mean the original charge. So, in ascertaining the amount due by the stockholders, you took the stock-certificate book and deducted the credits to the stock account, and the balance the stockholders owed? If the stock-book shows a hundred shares of stock issued to a stockholder, he is subject to a charge on his account here — in addition to the bonds here — of ten thousand dollars?

A. Yes, sir.

Again, on page 215, he testifies as follows:

Q. Please turn to the stock account in the general ledger. What amount is charged to the stock account in the general ledger?

A. $542,115.17 is charged to the account of stock and bonds.

Q. Isn't there $494,000 of that, that is first-mortgage bonds?

A. Yes, sir.

Q. Then, how much of the stock entries in all — how much is charged to stock independent of bonds?

A. Independent of bonds, and the bills payable to E. A. Peter, there is nothing charged to stock.

Q. Nothing charged to stock?

A. No, sir.

There had been an entry on the journal of the company, making stock debtor to first-mortgage bonds $494,000, which was afterwards corrected. Mr. Murray is examined as to these entries, and testifies:

Q. Look at this book — what book is it?

A. The journal of the Brierfield Coal and Iron Company.

Q. Whose handwriting are those entries in?

A. My own handwriting.

Q. I wish you would read on page 105 the last in there, to stock dated June 30, 1884?

A. Stock, to first-mortgage bonds debtor, 494,000 dollars; T. J. Peter, 280,000; E. S. Plumb, 99,000; Samuel Thomas, 83,000; Justin S. Morrill, 11,000; C. C. Huckabee, 15,000; R. L. McCalley, 5,000; John G. Murray, 1,000. Money paid for bonds having been credited to stock, and should have been credited to bonds, as no consideration has been received by the Brierfield Coal and Iron Company for the stock issued.

Q. That entry was true at the time it was made?

A. Yes, sir.

Record p. 212.

S. Roman, an expert, examined for the complainants, on cross examination, testifies:

Q. You have read all that the stock-certificate book shows, and it is the only book you have thoroughly looked over?

A. Yes, sir.

Q. That book is necessarily connected with the other books, is it not?

A. It ought to be, from what I understand from Mr. Murray.

Q. I asked you if that book is not necessarily connected with other books?

A. It ought to be.

Q. Is it?

A. Not here, with the regular books.

Q. I don't understand?

A. No entries of the stock-books in any of the books produced here.

Q. Have you examined them all?

A. Yes, sir.

Q. Thought you said there were some you had not examined?

A. They would have no reference to it.

Q. You say, then, there are no entries in any of the books relating to the stock-certificate book?

A. No, sir; not to my knowledge.

Q. How about these notes?

A. As I answered in the direct examination, they have no direct connection at all.

Q. Money received for the stock has no direct connection?

A. For the books of the Company do not show to whom the

stock was issued, or the stock account does not show to whom the stock was issued. The stock account of the ledger does not give the names and amounts, or anything else, of the stock delivered to any party.

Q. Does any book throw any light on that book at all?

A. On the different certificates contained in that book?

Q. Do they not throw any light at all?

A. No, sir.

Record p. 211.

KNOWLEDGE OF ILLEGALITY.

Mr. Peter says that all of the stockholders knew at the date of the thirty per cent. assessment that they were liable on their stock subscriptions. This is his testimony:

Q. When did you first learn that the original plan under which this organization was supposed to be conducted was invalid?

A. Prior to the resolution which levied the thirty per cent. assessment. The assessment prior to that had been paid in coupons, by the consent of all the bondholders. I had learned from —— source just prior to June, 1886, that the stock was liable to be assessed in full — that it would have to be paid in full under the Alabama statutes.

Q. That was early in June, 1886?

A. Just prior to that.

Record p. 240.

This resolution was adopted January 1, 1886. Record p. 191.

On cross-examination, Mr, Peter makes the knowledge and the time when the stockholders received it clear. I quote from the record, page 240:

Q. Prior to the time when the thirty per cent. assessment was made, had it ever been called to the notice of the stockholders, or directors, that their original plan of subscription was invalid?

A. No, sir.

Q. You were President of the Company at that time?

A. Yes, sir.

Q. Did you know that the plan of subscription was not authorized by the laws of Alabama?

A. Not until shortly before thirty per cent. assessment was levied.

Q. Do you know whether any other stockholders or directors knew that it was unauthorized?

A. I know they did not.

(London moved to exclude the answer on the ground that the parties are charged with a knowledge of the law.)

Q. After the stockholders became informed that this plan of subscription was unauthorized by the laws of Alabama, that thirty per cent. call was made?

A. Yes, sir.

Q. The stockholders were not informed until that time?

A. No, sir; they had not. I had been informed, and I had the directors pass this resolution, and explained the matter to them.

Q. After the assessment of thirty per cent. was made, you explained to the stockholders the law of Alabama on this mode of subscription?

A. Yes, sir; and told them that they would have to pay it.

There is an apparent discrepancy between these statements by Mr. Peter and the testimony of Mr. Murray, the Secretary. The latter testifies: "In January, 1887, this matter of stock assessment was settled."—Record, page 224. Though he states elsewhere that he did not know of the illegality of the subscription until July, 1887.—Record, page 232. He testifies that he never knew anything about the invalidity of the subscription until July, 1887, and at the same time testifies that the directors, of which he was one, treated the stock as unpaid as early as July, 1884. His testimony on this subject, on cross-examination, is as follows (record pp. 228–229):

Q. At the time that resolution was adopted authorizing the issue of ten shares of stock, with one bond for ninety per cent. of the par value of the bond, the directors and stockholders all supposed that to be a valid agreement?

(Objection by London, on the ground that what they supposed is not evidence, and that it is hearsay.)

A. That is not in the form of a resolution. It is the face of the stock subscription. All thought it was all right and subscribed for it. Their signatures are there.

(London moves to exclude the answer of the witness.)

Q. When was it found that it was an invalid subscription?

A. I never knew anything about it, so far as I am concerned, until July, 1887.

Q. When did they begin assessing the stock?

A. Can tell by looking at the record. I think July, 1884.

Q. That was when they first began to assess?

A. Yes, sir.

Q. In July, 1884, it was treated by the directors and stockholders as unpaid stock?

A. Yes, sir.

Q. Assessments were made on it from time to time?

A. Yes, sir.

There is really no conflict as to the statement of Mr. Peter, that it was known as early as January 1, 1886, that the subscribers were liable on their stock subscriptions.

ASSESSMENTS OF STOCK.

The records of the Company show that an assessment of twenty per cent. on the stock was made as early as July 9, 1884; seven per cent. April 20, 1885, and thirty per cent. January 1, 1886.

Resolutions, record pp. 190, 191, 192.

In this connection, Mr. Peter was asked:

Q. Was the fifty-seven per cent. assessment of which you have spoken all the assessments that were levied on the stock?

A. By the action of the Board of Directors?

Q. By the Company?

A. Yes, sir.

Q. There was never any call made for any part of the stock after January 1, 1886?

A. Nothing by the Board of Directors. Individually I demanded of those who had not paid, and they said they were unable to pay.

Q. The Board of Directors made no other call?

A. No, the Board of Directors made no other call.

Record p. 184.

FIRST MORTGAGE.

The proceedings of the directors and stockholders authorizing the execution of the first mortgage to Preston B. Plumb, as trustee, as shown by the records of the Company, are as follows:

At a meeting of the Board of Directors held September 1, 1882,

On motion of C. C. Huckabee, the President of the Company was authorized to publish the following notice:

Notice is hereby given, in conformity with the provisions of the statute in such cases made and provided, that there will be a meeting of the *the* stockholders of the Brierfield Coal and Iron Company held at the office of said Company in the town of Brierfield, county of Bibb, State of Alabama, at 9 o'clock a. m., on Friday, Aug. 25th, 1882, to consider the propriety of placing mortgage upon the property of said Co. and the issuance of bonds thereunder.

The board then adjourned to meet at the call of the president.

JOHN G. MURRAY,
Secretary.

This is to certify that the above advertisement has been published in the Bibb Blade 4 successive weeks, beginning Aug. 3rd, 1882, and ending August 24th, 1882.

J. M. LANGSTON & Co.,
Per S. H. GIST.

BRIERFIELD, ALA., Aug. 25th, '82.

In accordance with published notice, a meeting of the stockholders of the Brierfield Coal and Iron Company of Alabama was held at the office of the Company, in the town of Brierfield. The meeting was adjourned until Friday, at 9 o'clock a. m., September 1, 1882.

T. J. PETER, President.

JOHN G. MURRAY, Secretary.

BRIERFIELD, ALA., Sept. 1, 1882.

The adjourned meeting of the stockholders of the Brierfield Coal and Iron Company was held at the office of the Company, in the town of Brierfield. A mortgage to Preston B. Plumb, trustee, was read, considered and approved, and the directors of the Company authorized to execute the same by unanimous vote of the stockholders of said Company.

Record pp. 559–560.

ISSUE OF BONDS.

It will be observed that there is no resolution or other action of the directors authorizing the issue or sale of bonds.

The bonds were issued to the several persons who were subscribers and were held by them at the time of the filing of the bill of Preston B. Plumb, August 3, 1887, as follows:

T. J. Peter, trustee E. T. Peter (registered)	5
" " F. I. Peter, "	5
" " G. F. Peter, "	5
" " Blanche E. Peter (registered)	5
Mrs. C. S. Plumb	99
Justin S. Morrill	11
A. O. Beebe, for Thomas, Brice & Seney	83
C. C. Huckabee	13
Esther A. Peter	50
T. J. Peter	216
John G. Murray	1
In all	493

The remaining seven bonds were held and claimed by John G. Murray. The holdings are all stated in detail by Mr. Murray, the Secretary, in his deposition in the Plumb case. Record pp. 407–410.

BONDS CLAIMED TO BE HELD BONA FIDE BY BANKS.

Some of these bonds were claimed to be in the hands of certain banks, *bona fide*, as collateral, having been pledged, as it was claimed, by T. J. Peter, to secure certain loans to the Company.

City National Bank of Selma, to secure $14,000, twenty-eight bonds. Record pp. 415–416.

Alabama National Bank, to secure $8,000, nine bonds. Record p. 416.

J. T. Fitzgerald, to secure $15,000, seven bonds. Record p. 416.

The Commercial Bank of Selma, to secure $22,500, twenty-seven bonds. Record p. 414

The same bank, to secure $5,000, three bonds. Record pp. 414–415.

The bonds held by the City National Bank of Selma were filed by it on July 25, 1888. Record p. 218.

The seven bonds held by the Commercial Bank of Selma were filed by John G. Murray. Record pp. 410–419.

The nine bonds held by the Alabama National Bank were filed by it the same day. Record p. 429.

The other bonds held by the Commercial Bank were field by it.

On the 20th of October, 1888, as shown by the receipt (Exhibit No. 13, record p. 538), T. J. Peter paid the entire indebtedness of the Brierfield Coal and Iron Company to the Commercial Bank of Selma, amounting to $24,265.68.

On October 17, 1888, as shown by the receipt (Exhibit 14, record p. 539), T. J. Peter paid the whole of the indebtedness to the Alabama National Bank, amounting to $8,704.85.

On December 15, 1888, as shown by the receipt (Exhibit 21, record p. 545), T. J. Peter paid to J. T. Fitzgerald $6,000, and became entitled to seven of the first-mortgage bonds filed by Fitzgerald. Record p. 460.

The amounts paid by T. J. Peter to the Commercial Bank of Selma, and to the Alabama National Bank, were claimed by him as credit on his stock subscription. Record p. 459.

SURRENDER OF STOCK.

In order to make the issue of stock and the subsequent transactions in reference to it plain, it will be necessary to go into the stock issue again at some length. All the certificates which were surrendered by the several stockholders to the Company are shown as exhibits in the record, pp. 1127 to 1170 of the original record, and pp. 595 and 596 of the printed record. The stock outstanding on July 29th, 1887, is shown in Mr. Murray's testimony in detail on p. 406 of the record, and which is to be found quoted *ante*, p. 20.

SURRENDER OF STOCK BY PETER AND MURRAY.

At a meeting of the directors held on the 29th of July, 1887, at which T. J. Peter, John G. Murray and E. T. Peter (son of T. J. Peter), were present, the minutes of which meeting are shown on pp. 192-195, John G. Murray was allowed to surrender to the Company four shares

of stock which had been issued to him; Thomas J. Peter was allowed to surrender 1160 shares which had been issued to him, and which said last mentioned shares were evidenced by his certificate number 36.

ISSUE OF STOCK TO THE PETER FAMILY.

In order to properly understand this surrender by Peter of his stock, it is necessary to state in detail in what manner this stock had been originally issued, and to whom, copies of the original certificates being appended to the record.

There was issued in the name of Esther A. Peter the following stock:

Certificate No. 1, October 1, 1882,	150 shares
Certificate No. 16, April 13, 1883,	350 shares

To T. J. Peter, trustee for Edward F. Peter:

Certificate No. 2, October 9, 1882,	20 shares
Certificate No. 17, April 13, 1883,	30 shares

To T. J. Peter, trustee for Florence J. Peter--

Certificate No. 3, October 9, 1882	20 shares
Certificate No. 18, April 13, 1883	30 shares

To T. J. Peter, trustee for George F. Peter—

Certificate No. 4, October 9, 1882	20 shares
Certificate No. 19, April 13, 1883	30 shares

To T. J. Peter, trustee for Blanche E. Peter—

Certificate No. 5, October 9, 1882	20 shares
Certificate No. 20, April 13, 1883	30 shares

To T. J. Peter, individually—

Certificate No. 6, October 9, 1882	170 shares
Certificate No. 21, April 13, 1883	150 shares
Certificate No. 30, November 23, 1883	1190 shares
Certificate No. 32, March 18, 1884	480 shares

These several certificates represent in the aggregate two thousand seven hundred and ninety shares.

Edward F. and George F. Peter were the sons, and Blanche E. and Florence J. were the daughters of Thomas J. and Esther A. Peter.

In addition to these, Certificate No. 35, was issued to T. J. Peter, October —, 1884, for one share.

CERTIFICATE NO. 36.

On October 28th, 1884, all of these certificates mentioned, except No. 35 for one share, were surrendered by T. J. Peter to the Company (as shown by the stub), and in lieu of cash, and of these certificates, Certificate No. 36 was issued in the name of T. J. Peter, trustee, for 2859 shares, and this stock remained on the books of the Company in that form, from that date until July 29th, 1887. This Certificate No. 36 is set out on page 208, and the *fac simile* of the stub and certificate is shown on page 1169.

The manner in which this stock was issued is explained by Mr. Murray, on page 224 of the record, as follows:

> Q. You stated that three hundred seventy-five thousand dollars' worth of stock was subscribed for. Will you please tell me how it is that on the issue of this certificate for 2859 shares to Mr. Peter, as trustee, the outstanding stock then amounted to 5123 shares?
>
> A. Yes, sir. According to the original terms of the subscription, as I have testified, when a subscriber to the capital stock paid nine hundred dollars he received a bond of the Brierfield Coal & Iron Company for one thousand dollars and ten shares of the capital stock of the Brierfield Coal & Iron Company. When the three hundred and seventy-five thousand dollars had been paid in, less the ten per cent. discount which was allowed on the bonds, they having been sold at ninety per cent. of their par value, it was found by Company that they needed more money. They had in their treasury the remaining one hundred and twenty-five bonds. These bonds *were bought by Mr. and Mrs. Peter, and upon the delivery to them of these bonds there were delivered to them in exactly the same way as they had been delivered to other persons buying bonds, ten shares of the capital stock for each nine hundred dollars paid in; so this stock was issued without ever having been subscribed for or without any authority from the board of directors of the company.* I bought one of the bonds myself; paid nine hundred dollars and received with it ten shares of the stock in the Brierfield Coal & Iron Company. Though never having been a subscriber to the capital stock, I received it on the same basis as it had been given to those subscribing to it."

PETERS'S TESTIMONY ON THIS STOCK.

T. J. Peter, the husband of Esther A. Peter, undertakes to explain away any liability of his wife for these shares, or in fact for any other shares, beyond the fifty thousand dollars which she claims to have paid. He is examined by his counsel and testified as follows:

Q. Did Mrs. Peter ever make any subscription to the stock of this Company other than this fifty thousand dollars?

London objects on the ground that the records themselves show.

A. No, sir.

Q. Did Mrs. Peter ever authorize anybody else to make any subscription for her to that company?

A. Not that I know of.

Q. For her?

A. Not that I know of. She never authorized me. I made it at first for her myself.

Q. Did she ever have any other certificates of stock other than for this fifty thousand dollars?

A. No, sir.

Q. I see on the books here—I see certain certificates of stock issued to a trustee for her benefit or as trustee for her. Did Mrs. Peter ever authorize those certificates to be issued?

A. No, sir.

Q. Did she ever have them in her possession or either of them?

A. No, sir.

Q. Where were they?

A. In the safe of the Brierfield Coal & Iron Company from the time they were issued to the time when they were returned and cancelled.

Q. Some were not returned and cancelled. Where are they?

A. My son has certificates issued to him as trustee.

Q. Where is the other?

A. Mrs. Peter has one issued to her. My sister, Mrs. Williams, has one issued to her.

Q. How much did you pay on the stock which you subscribed for; how much had you paid when this suit was commenced?

A. About eighty-three thousand dollars, I think. It was correct as Mr. Murray stated it.

Q. That is, eighty-three thousand and odd dollars?

A. Yes, sir.

Q. Of that stock that you subscribed for, how much was issued to trustee for the benefit of Mrs. Peter—of the stock you subscribed for? You say you paid eighty-three thousand dollars on it before the suit was commenced. Of that amout how much was issued to trustee for the benefit of Mrs. Peter?

A. I don't know that I understand your question. 697 shares in a certificate and forty to me in one as trustee for my wife. Her certificate was issued to her.

Q. For fifty thousand dollars?

A. Yes, sir.

Q. That is all?

A. Mrs. Peter has two certificates of stock now.

Q. The one for fifty thousand dollars she subscribed for and paid for?

A. Yes, sir; and one to Edward S. Peter as trustee for 697 shares.

Q. Before this certificate for 697 shares as a part of the stock you subscribed for and paid on stock eighty-three thousand dollars?

A. Yes, sir.

London objects, because it appears from the subscription book that it is a part of the 2,859 shares which were issued to T. J. Peter as trustee for Mrs. E. A. Peter.

Q. Did Mrs. Peter ever have in her possession, as her own, any other certificate of stock than these two?

A. She never had but the one. She has not that now; my son has that. She has only the fifty thousand dollars which she paid for.

Q. What was the purpose of having that stock in the name of Edward Peter, trustee for Mrs. E. A. Peter, number 40?

London objects on the ground of illegality and irrelevancy.

A. I owed my wife and sister money, and these certificates of stock were issued to be held as collateral, so that if any money could be made out of them it could be paid to them for the money I owed them." Record pp. 236-237.

The 697 shares referred to by this witness, in this part of his tesmony, will be explained hereafter.

ENDORSEMENT ON CERTIFICATE NO. 36.

It will be observed that on the back of Certificate No. 36, record, p. 1170, is the following endorsement:

"*This stock is held by me as trustee for Esther A. Peter, whose money paid for it.*

"T. J. PETER."

Her husband, T. J. Peter, was examined in reference to this endorsement, and testified as follows:

Q. That Certificate No. 36; look at it. Whose handwriting is that endorsement, "This certificate is held by me for Mrs. Peter, whose money paid for it?"

A. Mine.

Q. Who paid for that?

A. There had been no money paid at that time.

Q. Please explain, then, what you meant in that endorsement by saying that her money paid for it?

A. I put that endorsement on it to put it away in the safe, so, in case of death or anything of that kind, if anything was received on it, she would have her money.

Record, p. 239.

MRS. PETER'S SUBSCRIPTIONS.

It was shown by the evidence that T. J. Peter and his wife, Esther A. Peter, resided in Wisconsin in 1882 (Record, pp. 236, 460); and it was also shown that Mrs. Peter at that time had a separate estate amounting to about four hundred thousand dollars (Record, p. 235). Mrs. Peter offered in evidence the following statutes of Wisconsin (Record, pp. 596, 597, 598):

CHAPTER CVIII OF THE PROPERTY RIGHTS OF MARRIED WOMEN.

Section 2340. The real estate of every description, including all held in joint tenancy with her husband, and the rents, issues, and profits thereof of any female now married shall not be subject to the disposal of her husband, but shall be her sole and separate property as if she were — married.

Section 2341. The real and personal property of any female who may hereafter marry, and which she shall own at the time of marriage, and the rents, issues and profits thereof shall not be subject to the disposal of her husband nor be liable for his debts, and shall continue her sole and separate property.

Section 2342. Any married female may receive by inheritance or by gift, grant, devise, or bequest from any person other than her husband and hold to her sole and separate use, and convey and devise, real and personal property, and any interest or estate therein of any description, including all held in joint tenancy with her husband, and the rents, issues, and profits, in the same manner and with like effect as if she were unmarried, and the same shall not be subject to the disposal of her husband nor be liable for his debts.

Section 2343. The individual earnings of every married woman, except those accruing from labor performed for her husband or in his employ or payable by him, shall be her separate property and shall not be subject to her husband's control or liable for his debts.

Section 2344. When the husband of any married woman shall have deserted her or shall, from drunkenness, profligacy, or any cause, neglect or refuse to provide for her support or for the support and education of her children she shall have the right to transact business in her own name and to collect and receive the profits of such business, her own earnings and the earnings of her minor children in her charge or under her control, and apply the same to her own support and the support and education of such children. Such business and earnings shall not be subject to her husband's control or interference or liable for his debts.

Section 2345. Every married woman may sue in her own name, and shall have all the remedies of an unmarried woman in regard to her separate property or business, and to recover the earnings secured to her by the two next preceeding sections, and shall be liable to be sued in respect to her separate property or business, and judgment may be rendered against her and be enforced against her and her separate property in all respects as if she were unmarried.

Section 2346. No marriage contracted since the third day of April, one thousand eight hundred and seventy-two, or which shall hereafter be contracted shall render the husband liable for the payment of the wife's antenuptial debts; but she

shall be liable to all remedies for the recovery of such debts to be enforced against her separate property as if she were unmarried.

Section 2347. Any married woman may, in her own name or in the name of a third person as her trustee with his assent cause to be insured for her sole use the life of her husband, son, or other person for any definite period or for the natural life of such person; and any person, whether her husband or not, effecting any insurance of the life of another may cause the same to be made payable or assign the policy to a married woman or to any person in trust for her or her benefit; and every such policy when expressed to be for the benefit of or assigned or made payable to any married woman or any such trustee shall inure to her separate use and benefit and that of her children, and in case of her surviving the period or term of such policy the amount of the insurance shall be payable to her or her trustee for her own use and benefit, free from the claims of her husband and of the person effecting or assigning such insurance and from the claims of their respective representatives and creditors; but if the annual premium on any such policy shall exceed the sum of one hundred and fifty dollars and is paid by any person with intent to defraud his creditors an amount equal to the premiums so paid in excess of said sum, with interest thereon, shall inure to the benefit of such creditors, subject, however, to the statute of limitations. The amount of any such insurance may be made payable, in case of the death of such married woman before the period at which it becomes due, to her children or to their guardian for their use, if under age, or to any other person as shall be provided in the policy. In such case the receipt of such married woman or of such children or of their guardian, if minors, shall discharge the insurance corporations from all further liability therefor.

The provision of this section shall apply to all insurance on lives effected before the passage of these statutes.

PROCEEDINGS OF DIRECTORS' MEETINGS AUTHORIZING SURRENDER OF STOCK BY MURRAY AND PETER.

At the meeting held on the 29th of July, 1887, the proceedings of which are shown on page 192–195 of the record, as stated, the directors present were T. J. Peter, John G. Murray and E. T. Peter, the son of T. J. Peter. These directors at this meeting proceeded to elect

Charles L. Bates to fill a vacancy caused by the resignation of A. A. Southwick. The minutes show that—

"The following resolution was offered by John G. Murray and adopted, and the president and secretary authorized to act in accordance therewith:

> Whereas Thomas J. Peter, on the 4th day of May, 1882, subscribed for twelve hundred shares of the capital stock of the Brierfield Coal & Iron Company of the par value of one hundred dollars each, upon which subscription he has paid in money the sum of eighty-three thousand six hundred and forty dollars and eighty-five cents ($83,640.85); and whereas said Thomas J. Peter has become the surety of said company for the loan from time to time to it of the sum of seventy-seven thousand eight hundred dollars ($77,800), which money has been used in the current business of said company, and has put his private property in pledges to secure such indebtedness to various persons and banks, all of which indebtedness appears on the books of said company as being unpaid:
>
> Resolved, That the balance unpaid on such subscription stock, namely, the sum of thirty-six thousand three hundred and fifty-nine and $\frac{15}{100}$ dollars ($36,359.15) shall not be called for or demanded of said Thomas J. Peter, but shall remain in his hands as indemnity to him against his said liabilities for said company so secured by him, and he shall be in nowise liable to pay the balance that is or may be owing to said company on the said stock subscription, but the said stock shall be held and considered as being fully paid up, and the unpaid balance due thereon shall be fully cancelled and shall so remain credited on the books of the company until said company shall have fully released and discharged him from his said liabilities for said company and shall have relieved the property pledged by said Thomas J. Peter as security for the debts of said corporation, and the secretary of said company shall deliver to said Thomas J. Peter a certificate that his stock is fully paid up, and said Peter may, if he see proper, assign and transfer said certificates of stock on the books of said company as stock fully paid up."
>
> Record p. 193.

These minutes also show that the "following resolution was offered by John G. Murray and adopted and the president and secretary directed to act in accordance therewith:

Whereas, There was issued to Thomas J. Peter, as trustee, on the 28th day of October, 1884, twenty-eight hundred and fifty-nine shares of the capital stock of the Brierfield Coal and Iron Company at the par value of one hundred dollars each; and whereas said Thomas J. Peter has paid to said company the sum of $83,640.85 on his subscription of $120,000, and Esther A. Peter has paid $50,000 on her subscription of $50,000; and whereas her stook for said payment was issued to Thomas J. Peter, trustee; and whereas said Thomas J. Peter offers to surrender eleven hundred and sixty shares of said capital stock, which was improperly and illegally issued, and presents the same for surrender; There —:

Resolved, That the Brierfield Coal and Iron Company accept the surrender to said company of certificate number 36 for 2,859 shares of its capital stock, and hereby authorizes the issue of certificate number 44 for 500 shares of capital stock fully paid up to Esther A. Peter and the issue of the certificates number 41 and number 42 for 1197 shares of fully paid up capital stock to Thomas J. Peter or his assigns."

Record p. 194.

E. T. Peter offered the following resolution, which was adopted, and the President and Secretary directed to act in accordance therewith:

"Whereas, On the 23d day of November, 1883, ten shares of the stock of the Brierfield Coal and Iron Company were, without authority of the board of directors of the Brierfield Coal and Iron Company, issued to John G. Murray, on which he has paid the sum of six hundred dollars, and desires to surrender to the said company four shares of said stock;

"Resolved, That the Brierfield Coal and Iron Company accept the return of four of said shares of stock from said John G. Murray, and that the President and Secretary be directed to issue to him a new certificate for six shares of said company's capital stock in lieu of the remaining six shares in certificates for ten shares, and that said six shares are fully paid up and constitute said Murray a stockholder of said corporation to that extent."

Record, page 183.

By these three resolutions, the board of directors authorized the cancellation of eleven hundred and sixty-four shares of the capital

stock of the company, and undertook to release Thomas J. Peter from an admitted liability on stock subscription of thirty-six thousand three hundred and fifty-nine $\frac{15}{100}$ dollars ($36,359.15).

STOCK ISSUED IN LIEU OF CERTIFICATE NO. 36.

In lieu of this certificate No. 36, for 2,859 shares, certificate No. 38 was issued to Charles L. Bates; No. 39 to Edward T. Peter, one share; No. 40 to Edward T. Peter, trustee for Esther A. Peter, 697 shares; No. 41, Esther A. Peter, 500 shares; No. 42 to Laura E. Williams. Numbers 37, 38 and 39 are dated January 12, 1887. Numbers 41 and 42 are dated July 29, 1887. The three last certificates, 40, 41 and 42, recite that they were issued in lieu of No. 36, for 2,859 shares, of which 1,160 were returned to the company by order of the board of directors.

The falsity of these dates is rendered perfectly apparent by reference to the date of the resolution authorizing the surrender of 1,160 shares, which is shown by the minutes to have been on the 29th of July, 1887.

CONDITION OF COMPANY.

The company continued its operations until August 2, 1887, the day the possession of its property was surrendered to P. B. Plumb, trustee.

On this day the unsecured indebtedness amounted to..... $212,735 18
(Exhibit "A" to Murray's deposition; record, pp. 197–203.)
From which should be deducted the amount due to the Memphis bank, secured by pledges of nails (record p. 168) about..... $10,000 00
And, in addition, the company owed for labor (shown in detail, record, pp. 560–572) about..... $10,000 00
Which left the total of unsecured indebtedness on August 2, 1887, about the sum stated above..... $212,735 18

T. J. Peter testifies that he did not think that the Brierfield Coal and Iron Company was ever insolvent, and that it had made no default in its payments prior to the 2d day of August, 1887. (Record, pp. 167–168.) He admits, on page 172 of the record, that the company had suffered some embarrassment. On cross examination by the counsel for the company, he states the real condition:

Q. When did the company first become embarrassed and unable to meet its obligations as they matured?

A. Well, I would say from recollection, a year before; within a year from the time we suspended. If the stockholders had all paid up their assessments, I think we could have gone through without any trouble.

Record, p. 180.

Mr. Murray the Secretary, is unable to say whether any profit had ever been made by the company. He says (record, p. 227) in answer to the question:

Q. Did the company ever make any profits?
A. Never declared a dividend.
Q. Did it ever make a profit?
A. Never kept a profit account.

T. J. Peter, the President, shows (record, p. 173) that the company had made losses of at least thirty thousand dollars.

AMOUNT OF INVESTMENT.

The amount invested in the enterprise is stated by T. J. Peter to have been about $800,000, composed of the following items, on page 174, record:

From bonds	$450,000
Subscription	174,000
Unsecured debts	200,000

On cross examination, he says (pp. 179–180):

Q. You stated in the examination-in-chief that eight hundred thousand dollars went into the plant. Was it not, in fact, nearly nine hundred thousand dollars?

A. The books show about nine hundred thousand, but in that was includeded sixty-four thousand of interest and this loss, amounting to nearly thirty thousand dollars, Of course, the people who put *there* money *in were entitled to interest*, and notwithstanding—what I mean to say is, exclusive of *of* bonds and loss which occurred in the last year of operation, the books show still about eight hundred thousand dollars invested in property.

J. G. Murray estimates the cash investment as between $700,000 and $800,000. Record, p. 411.

The record shows the following investment, conceding that ninety cents was realized on the bonds:

Bonds	$450,000
Realized from subscriptions	115,268
A total of	$565,268
In addition to this, the unsecured debts, amounting to	212,000
went into the enterprise, making the Total expenditures by the stockholders and creditors	$777,268

FURTHER ASSURANCE.

As is shown by the proceedings of the meeting held July 29th, 1887, Preston B. Plumb, as Trustee, demanded the execution of a deed of further assurance under the provisions of the 6th section of the original mortgage or deed of trust (Record, p. 14), and the Board of Directors ordered the President and Secretary to forthwith execute the deed of further assurance which was then presented, and is shown as Exhibit "A" to the original bill, Record p. 9, and which was executed on that day.

At this time all the bonds, with the exception of *ninety-two*, were held by the original stockholders of the company. I quote from the testimony of T. J. Peter, record pp. 184, 185:

> Q. At the time that deed of further assurance was made, did not the bondholders and stockholders consist practically of the same persons with the exceptions that were stated by Mr. Murray of the banks that held those papers as collateral security?
>
> A. Yes, sir; to a certain extent they did.
>
> Q. Will you state who were bondholders who were not stockholders?
>
> A. I stated on the other examination and went into details. Mrs. Pomeroy, 9 bonds; Alabama National Bank, 9 bonds; the State National Bank, 28 bonds; the Commercial Bank, 26 bonds, and J. T. Fitzgerald, 20 bonds; my wife, who was a stockholder to the amount of fifty thousand dollars and holds 218 bonds.

Of these ninety-two bonds, T. J. Peter had acquired all except the thirteen held by Fitzgerald, before the final decree in the Plumb case, leaving in the hands of outside parties thirteen bonds.

ACTUAL INTENT.

On cross examination by counsel for the company as to the intent with which this deed of further assurance was made, the following occurs in the testimony of T. J. Peter:

> Q. In executing that deed of further assurance was there any intention or purpose on the part of the officers or stockholders of the company to defeat or defraud, or was it executed with the *the* intent and purpose of carrying more fully into effect the first deed of trust?
>
> A. There was certainly no intention to defraud any of the creditors. We made the deed because we thought we had to do so under the original trust deed.
>
> Q. Do you know under whose advice, if any, the suit of Chambers, trustee, against The Brierfield Coal and Iron Company was instituted in this court?
>
> Objection on the ground of irrelevancy and illegality.
>
> A. Under the advice of Senator Morgan.
>
> Q. Senator Morgan was the attorney and counsel for Senator Plumb?
>
> A. Yes, sir.
>
> Q. Do you know of any fraudulent intent or purpose on the part of Senator Plumb in having this suit instituted in this court?
>
> Objection on the ground of illegality and irrelevancy.
>
> A. I know that it was the intention and expectation that it was the best way to protect the interests of the bondholders and creditors and stockholders. We thought if that were not done there were many attachments which would fritter away the entire value of the property. We thought if we could prevent that the property would probably sell for enough to pay up; but there has been such hard times in the iron business and such depression in that class of property that we abandoned all hope."
>
> Record, p. 181.

The original deed of trust, which is recited at length in Exhibit "A," conveys the following property:

All of the real and personal property now owned by said company situated in the State of Alabama, and all the real and personal property that may hereafter be acquired and owned by said company wherever the same may be situate, together with all the franchises, tolls, incomes, rents, issues, and profits of said company, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same and any and every part thereof, with the appurtenances thereto belonging.

Record, p. 11.

The deed of further assurance specifically describes the real estate (set out in the Record, pages 18 to 26, both inclusive,) and personal property, and in this last includes the goods in the store and "*moneys, bills receivable, accounts and credits of every kind wherever situate,*" Record, pp. 26, 27, and also "*all debts of every kind due to it and all rights of action and credits of every kind.*"

By agreement of the parties, Exhibit "A" was to be received in evidence in the cause, of both the original deed of trust and the further assurance. Agreement, Recoord p. 163.

DEMAND FOR POSSESSION BY TRUSTEE.

On August 2, 1887, four days after the execution of the further assurance, the board of directors of the Brierfield Coal and Iron Company held their last meeting, and at this meeting the trustee, Preston B. Blumb, made a demand for the possession of all the property of the company on the ground that there had been a failure on the part of the company to pay interest on the sinking fund for more than six months, and pursuant to this demand the company turned over to John G. Murray, its secretary, as the agent of Preston B. Plumb, trustee, all of the property and assets of every kind and description belonging to the Brierfield Coal and Iron Company.

Record pp. 195, 196.

THE PLUMB BILL.

On August 3, 1887, the day after the possession of the property of the company was surrendered to Murray, as the agent of P. B. Plumb, trustee, Mr. Plumb filed a bill in the Circuit Court of the

United States for the Middle District of Alabama, which is to be found in the record pp. 253, 264.

The purpose of filing this bill, stated by T. J. Peter:

"I stated that after consultation with Gen. Morgan and Gen. Pettus and a discussion among ourselves, it was thought we could best protect the interests of the bondholders, stockholders, and the general creditors by commencing this action in the name of P. P. Plumb in the United States Court in order to prevent the property from being frittered away by attachments and lawsuits."

Record, p. 185.

In this bill the stock subscriptions are stated as follows:

"The subscriptions of stock, as they appear upon the books of said company, are as follows:

T. J. Peter and associates	$120,000 00
E. A. Peter	50,000 00
R. L. McCalley	5,000 00
C. C. Huckabee	15,000 00
G. I. Seney and associates	75,000 00
C. S. Plumb	50,000 00
Plumb & Hood	50,000 00
Justin S. Morrill	10,000 00

Oratar states that Thomas J. Peter, by his authority, subscribed for the stock in the foregoing list in the name of C. S. Plumb and Plumb & Hood. The subscription was, in fact, made for Mrs. Carrie S. Plumb, the wife of orator, as an investment for the benefit of the separate estate of Mrs. Carrie S. Plumb, and the payments made thereon were made from her separate estate, and the certificates for such stock were issued to her upon and in virtue of both of said subscriptions and to the full amount thereof, so that neither your orator nor Calvin Hood ever became the owners of said stock or any stock in said Brierfield Coal and Iron Company or any of the bonds of said Company."

Record, p. 254.

And the payments on subscriptions as follows:

"The books of said company show that the following payments have been made upon the stock of the several holders thereof, either by themselves or their assignors: On the stock of Carrie S. Plumb the sum of $43,089.78; on the stock of Justin

S. Morrill, $6,250.00; on the stock of Samuel Thomas, $23,745.00; on the stock of C. S. Brice, $810.00; on the stock of G. I. Seney, $22,800.00, and on the stock of Esther A. Peter, $50,000.00, and on the stock of T. J. Peter, $83,640.85, and on the stock of John G. Murray, $600; said shares of stock are liable in the hands of the present holders, to be assessed for the payment of any sum remaining due and unpaid thereon. Orator has neither the power nor information as to the facts that are necessary to the statement and settlement of the account between the shareholders and said company respecting their liabilities for such assessment, nor has he any power to make such assessment under the deed of trust hereinafter mentioned, and the assistance of a court of equity is necessary for these purposes."

Record, p. 255.

This bill also contains the following allegations:

"The said company having failed to pay the interest on its bonds secured by the deed of trust to orator, and having failed to provide any sinking fund for the redemption of the bonds, as required in said deed of trust, orator was bound, as he is advised, to demand the possession of the trust property and to conduct, operate, and administer the same according to the requirements of said deed of trust. No creditor of said company secured by said — or otherwise, has demanded or required of orator that he should proceed to a strict foreclosure of said deed of trust either by a sale of the property or by a bill in equity to foreclose the same. Orator states it as his belief, and believes that this opinion will be concurred in by all parties concerned in interest, that a sale of the property on foreclosure of the trust conveyance without a further effort to develop the property so that it will pay all the debts of the company would be ill-advised and necessarily hazardous to all concerned; but orator states that he will not be able without the active assistance of the court in allowing him to borrow money on the faith and credit of the property, supported and sustained by the decree of this honorable court, to render the property self-sustaining or to pay the laborers the sums that are due them or to realize a sum sufficient to meet the interest on the bonds of the company or to pay any part of the unsecured debts of the company.

And if this honorable court shall deny to orator its assistance in so obtaining money to conduct the business of the com-

pany he will ask leave to amend this bill so as to bring before this honorable court the question whether he shall proceed to close the trust under a decree of foreclosure and sale.

Orator states that the property conveyed to him in trust is capable under proper management, and with its credit restored under the orders of the court, of meeting the current expenses of its management in the manner provided in said deed of trust, and of paying all its debts, and of yielding to the shareholders a substantial profit on their investment. Orator further states that he is advised and believes that it is necessary to his security in the administaation of said trust estate under the third section of said deed and under its other provisions, and also to the secure and proper management of said property, that he should have the ruling and direction of this honorable court, and that it is also necessary that an account should be stated with each stockholder and each bondholder of said company to ascertain what sums of money such stockholders may owe said company, if any, and what sums of principal and interest is due each bondholder secured by said deed of trust, and that they may receive from time to time such rateable and proper allowances on their debts as the court shall direct the trustee to pay over to them."

Record, p. 262.

And also the following:

And to prevent the forced sale of the trust estate while it is capable of (being) made adequate to the payment of all its indebtedness, and to prevent unnecessary and vexatious litigation, orator states that it is necessary that this honorable court will take jurisdiction and control of said trust estate and of its management and administration, and to protect and preserve the same from time to time by such orders and decrees as may be found necessary and lawful.

Record, p. 263.

The prayer of the bill, after the prayer for process and that the creditors and others having claims be allowed to come in and make themselves defendants, concludes as follows:

Orator further prays that an account be taken and stated between the said Brierfield Coal and Iron Company and each

stockholder and bondholder thereof, to show what sums, if any are due and payable to each of them out of any moneys that may come into the hands of the orator derived from such trust property and subject to distribution; that orator may, from time to time, as the court shall direct, present his accounts of his administration of said trust estate, and that the same may be passed upon and decided by this honorable court, and that this honorable court will in all things protect said trust estate and direct your orator as to the administration of the same and the sale thereof, if a sale is found to be the best method of disposing of the property or any part thereof for the benefit of all concerned. Orator further prays that he may forthwith be authorized and directed by the order and decree of your honor's court to borrow, on the faith and security of said trust property, the sum of twenty-five thousand dollars, to be applied by him as said trustee to the payment of the wages *and to* operatives and laborers and employees of said Company and, so far as it will go, to the satisfaction of the preferred claims against said property falling due at an early date as shown in this bill, and thus to avoid the sacrifice of said property or valuable portions thereof; and said orator further prays that he may be authorized and directed by such order or decree of this court to issue certificates of indebtedness or other evidences of indebtedness, in such sums and from and payable at such times as may be prescribed by such decree, and that said certificates of indebtedness or other evidences of indebtedness may, by the said order or decree, be made and constituted a prior lien on all of said trust property over and above all other liens now existing, except taxes, the said certificates not to be sold or registered or hypothecated for less than their face value, and that this honorable court will grant to orator such other or further general or special relief in the premises as to equity and good conscience may appear meet and proper.

Record, pp. 263–264.

The original deed of trust or mortgage and the further assurances are made exhibits by an amendment filed on the 6th day of August, 1887. Record, p. 257.

ISSUE OF CERTIFICATES OF INDEBTEDNESS.

On August 6th, 1887, Preston B. Plumb, before any answers were filed, and without notice, made a motion for authority to borrow $25,000 (record, p. 300), and authority was given, without notice, to issue certificates for this amount. Record, pp. 301–303.

The Brierfield Coal and Iron Company answered this bill on August 11, 1887, admitting all the allegations to be true as alleged in the original bill in the case at bar (record, p. 4) and not denied by the Company in their answer in that case.

As appears by the answer in the record (p. 369), this original answer was, by leave of the court, stricken out and the substituted answer there shown was filed on January 14th, 1888, which was after the bill was filed in the case at bar.

On November 21st, 1887, W. L. Chambers was, by an order of the court, substituted as trustee, in place of Preston B. Plumb (record, p. 337), and the suit was after this conducted in his name.

On January 7th, 1888, W. L. Chambers, the substituted trustee, filed a petition for authority to issue $27,000 of additional certificates of indebtedness. Record, pp. 350–353. And this petition was supported by the affidavits of Thomas J. Peter (record, pp. 353–354) and John G. Murray (record, pp. 353–356). Notice of this petition was only given to the attorney of C. C. Huckabee and R. L. McCalley. Record, p. 353.

On January 16th, 1888, the court, without notice, authorized the substituted trustee to issue additional certificates to the extent of $27,000. Decree, record, pp. 376–377. These certificates are, by the terms of the decree, made a first lien on the property of the Company.

On May 15th, 1888, the substituted trustee was, without any notice, authorized by a decree to borrow the further sum of $10,000, which was declared a lien on the property. Record. pp. 384–385.

All of the defendants appeared and answered, except Justin S. Morrill, and the bill was taken as confessed as to him.

REFERENCE IN PLUMB CASE.

On July 13th, 1888, the cause was referred to a Special Mastar. Record, pp. 387–390.

Evidence was taken before the Master and the several persons whose names are hereinbefore stated as bondholders filed the bonds and coupons for allowance. Record, pp. 396–550.

The Master reported and the cause was submitted for final decree July 3rd, 1888. Record, pp. 403–404.

The report of the Special Master appears to have been omitted from the record, but the final decree rendered shows that a report was made. Record, p. 581.

FINAL DECREE IN PLUMB CASE.

This final decree, after declaring the original mortgage and the further assurance valid liens on the property, directed a sale of the property by a Special Master. Record, pp. 581–591.

The proceeds of the sale were directed to be applied—

1. To costs.
2. To debts contracted under the orders of the court.
3. The amount due Lillian A. Carter, as shown by the report of the Special Master.
4. The residue to be distributed among the bondholders.

Record, p. 592.

The decree then provides that the sum of $38,278.42, found to be due by Mrs. Carrie S. Plumb to the Company, should be applied to the payment *pro tanto* of the bonds and coupons filed by her, and the amounts found to be owing by Justin S. Morrill, Samuel Thomas, George I. Seney and Calvin S. Brice on stock subscriptions were, in like manner, to be applied to the payment *pro tanto* of the bonds and coupons filed by them respectively.

The balances found to be due the several persons who filed bonds and coupons, and not therein required to be paid to the debts due by them for stock subscriptions, were allowed to be applied to the purchase money of the property when sold. Record, pp. 592–593.

The Brierfield Coal and Iron Company introduced in evidence the following act of the General Assembly of Alabama:

Exhibit No. 1 to Testimony of Jno. G. Murray.
Record pp. 493, 494, 495.

No. 145. H. B. 77.

An act to amend and ratify the charter of the Brierfield Coal and Iron Company, of Bibb county, Alabama.

Section 1. Be it enacted by the General Assembly of Alabama, That, whereas, on the 27th day of April, A. D. eighteen hundred and eighty-two, the incorporators of the Brierfield Coal

and Iron Company, located at Brierfield, in Bibb county, Alabama, filed in the probate court of Bibb county, Alabama, their declaration to become a body corporate, and by due proceedings became a body corporate according to the statutes in such case made and provided; and whereas, it is deemed proper and expedient to grant to said corporation certain powers it cannot secure under such general incorporation: therefore,

Be it enacted, That said company is hereby declared to be a body corporate, under the laws of this State, by its present name and style.

Sec. 2. Be it further enacted, That, in addition to the powers, rights, and privileges and franchises now owned or possessed by said Company, it is hereby authorized and empowered to locate, construct, and bring into final completion one or more railways, of such gauge and as many tracks as it may deem proper, from its mines, works, ore beds, coaling and coking grounds and manufactories to each other, and to any point or points on any of the navigable waters of this State, and to such depot or depots as they may choose to establish along the lines of any of the railways now constructed or that may hereafter be constructed in this State, and to connect with such railways and use the same in the conduct of the business of the Company and in the transportation of the products of their mines, manufactories, and other works; and, upon filing in the office of the Secretary of State an agreement to abide by the lawful rules, regulations, rates and tariffs that may be established by the railroad commission of this State, may engage in the carriage of persons and property for the public. Said company may also construct for the use or lease of or may purchase any railway or railways, now or hereafter constructed, connecting in whole or in part any of its property with any of the railways or navigable waters of this State, or that may be made useful in making such connection. Said company may also purchase, construct, charter or hire tugs, barges, steamboats and other means of water transportation, and may use them in the conduct of its business and in the transportation of the products of its mines and manufactories on any of the navigable waters of this State, and may also use the same in the transportation of persons and property for the public.

Sec. 3. Be it further enacted, That said Company is further authorized to lease, purchase, erect and establish all such buildings, fixtures, structures, machinery, depots, docks and

wharves as may be needed, convenient or useful in carrying on its business.

Sec. 4. Be it further enacted, That said Company is authorized to survey and locate its lines of railway over the lands of others for the purpose of defining and describing accurately the parts of said lands which the Company wish to have condemned for the right of way, and the said Company shall have the right to condemn for its use as right of way a strip of land one hundred feet wide over the lands of others; and proceedings to condemn the lands of others for the use of said Company shall be governed and regulated by the general laws of this State in reference to railroad companies; provided, that just compensation shall be made to the owners of such lands before the Company takes possession thereof.

Sec. 5. Be it further enacted, That said Company are hereby granted the rights, remedies, powers and privileges, and subjected to the obligations contained in sections 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841 and 1842, in chapter one, title one, part two, of the Code of Alabama of 1876, and all amendments thereto now in existence.

Sec. 6. Be it further enacted, That the capital stock of said Company may be increased from time to time as the business and necessities of the Company may demand, not contrary to the laws of the land.

Sec. 7. Be it further enacted, That said Company shall have the power from time to time to issue bonds for the payment of money borrowed or for its indebtedness secured by mortgage or mortgages on its property or any portion or portions thereof.

Sec. 8. Be it further enacted, That said Company may sell its property or any part thereof at any time or times.

Approved December 12, 1884.

The following agreement was made by counsel in reference to depositions, exhibits, books and the record in the case of W. L. Chambers, Trustee, v. Brierfield Coal and Iron Company, No. 103, a transcript of which is shown in the record beginning with page 253.

It is agreed between counsel for the respective parties that the depositions taken on the reference in the case of W. L. Chambers, trustee, *vs.* Brierfield Coal & Iron Company *et al.*, No. 103 in this court, together with the exhibits, books, and records, may be used as evidence in this cause by complainants

and defendants, with the right of either party to object on account of *of* irrelevance of any part thereof. It is further agreed that any part of the record in the case of W. L. Chambers, trustee, *vs.* Brierfield Coal & Iron Company, No. 103 in this court, may be read in evidence in this cause by any of the parties hereto, subject to objection on account of its irrelevancy or sufficiency as evidence, but no objection is to be made as a matter of form.

Record, p. 178.

The Circuit Court denied the application for a receiver in this cause on May 25th, 1888. Record p. 96.

AMENDED BILL.

On July 2d, 1889, after the testimony was taken, the complainants offered for allowance, as upon the hearing, an amended bill of complaint and on the 5th day of July, 1889, this amended bill was filed by leave of the court. The amended bill is to be found in the record, pp. 113, 123, and the order allowing it, record, p. 123.

The changes made by the amended bill are as follows:

1. The original bill alleged that the agreement for the distribution of bonds was made *before* the organization of the company, the amended bill inserts the words "*or after*." Record p. 116.

2. The original bill alleged but one subscription (record p. 3), the amended bill alleges at length the two subscriptions (record pp. 116, 117), the fact that the first was made and reported to the Judge of Probate of Bibb County, and the second was made after the company was organized; avers that the second subscription list was opened without authority of law and that this second subscription contract,

> "so far as it authorized the issue of bonds is contrary to public policy, in violation of the constitution and statutes of the State of Alabama, and void."
>
> Record p. 117.

3. The original bill alleged that interest had been paid on *all* of the bonds, the amended bill adds the words "*or some of them*," and adds the following alternative averment:

> "If orators are mistaken in the allegation that the coupons have been paid to the several bondholders, then orators aver that the amount of said coupons, or a large part thereof, as they

matured were credited to such of said subscribers as were holders of said bonds on their stock subscriptions."

Record p. 47.

4. A further amendment is as follows, and shown on page 118 of the record:

> "*And orators are advised, and upon such advice aver and charge, the said bonds so issued by the said corporation were issued without authority of law and in violation of the constitution and laws of the State of Alabama, and are fictitious and void under the said constitution and statutes; and if orators are mistaken in the foregoing allegation*"

5. The amended bill further corrects the number of bonds which were alleged to be held by the three banks and denies that these bonds were held *bona fide*. Record, p. 119.

6. The amended bill also contains the following additional averments, which are shown on pages 121 and 122 of the record:

> "If orators are mistaken in the foregoing averments, and the notice as required by law was given, and the statutory requirements as to said meeting were complied with, and a majority in value of all of said stockholders met and authorized the issue of said bonds, orators aver that the same were issued without any consideration therefor; and orators further aver that by the statutes of the State of Alabama in force when said bonds were authorized to be issued and the said mortgage was made it was, among other things, provided that no corporation organized under the general corporation laws of said State should issue bonds for more than two-thirds of its capital stock; and orators aver that at the time said meeting was held and since then the capital stock of said corporation has never exceeded the sum of three hundred and seventy-five thousand dollars ($375,000), the amount subscribed for; and orators aver that the issue of the said five hundred thousand dollars of bonds was in violation of the statutes of Alabama, illegal and unauthorized; and orators aver that each of said persons who own said bonds took the same with full notice and knowledge of such illegality; and orators further aver that some time after the organization of said corporation, to-wit, in the year 1886, all of the stockholders of said corporation were informed

of the invalidity of said contract of subscription, whereby they were to receive stock and bonds for their subscription as aforesaid, and under which all of said stockholders had received the bonds held by them respectively; and orators aver that the board of directors of said corporation, with full knowledge of the illegality of the issue of said bonds, and knowing that said stockholders, who were also bondholders, had been informed of such illegality, and after said corporation had become insolvent, authorized the execution of the further assurance, which was afterwards and pursuant to such authority executed and delivered to the said P. B. Plumb as trustee, and a copy of which is attached to the original bill filed in this cause and marked Exhibit A, and is prayed to be taken and treated as a part of this amended bill, whereby the said corporation undertook to convey and transfer to said Plumb as such trustee, in addition to all of the other property of every kind and description owned by said corporation, to secure said bonds held by said subscribers as bondholders, all the unpaid stock subscriptions owing and due to said corporation by these same bondholders as stockholders in fraud of the creditors of said corporation.

And orators aver and charge that said Plumb, when he received said further assurance, well knew of the illegality of said bonds, and with intent to carry out the fraudulent purposes and design which he and the other defendants who were stockholders had formed to defraud the creditors of said corporation entered into the possession of the property conveyed to him as such trustee, and within a few days thereafter filed the bill in this honorable court which is herein referred to and prevented and hindered the creditors of said corporation from asserting their just rights and claims to said property."

Answers were filed to the amended bill, and exceptions to these answers were filed by complainants, but, in view of the subsequent action of the Circuit Court, the rulings on these exceptions are immaterial.

RULING OF COURT ON AMENDED BILL.

On July 18, 1889, the Circuit Court vacated the former order allowing the amended bill to be filed, and disallowed the amendments, and the cause was submitted for final decree on the pleadings and evidence and motion of defendants to dismiss the bill for want of equity. Record p. 148. On July 19, 1889, the cause was finally heard and at

the hearing complainants again asked leave to file the amended bill which had been disallowed. Record p. 251.

FINAL DECREE.

On July 24, 1889, the Circuit Court caused the following decree to be entered:

> "This cause came on to be further heard on the 19th day of July, 1889, a day of said term, and was submitted for decree by the parties on the pleadings and testimony and decree *pro confesso* and motion to dismiss the bill for want of equity and on motion of complainants to amend the bill of complaint; and, after full argument by counsel of the parties and on due consideration by the court, it is ordered that the motion of complainants to amend the bill of complaint be, and the same is hereby, denied.
>
> And the court, proceeding to examine and consider the cause on the merits, is of the opinion that the proof fails to establish the case made by the bill, and that the complainants are not entitled to relief.
>
> It is therefore ordered, adjudged, and decreed by the court that the bill of complaint be, and the same is hereby, dismissed out of the court at the costs of the complainants, to be taxed by the clerk, for which execution may issue."
>
> Record, p. 251.

And from this decree the complainants prayed an appeal to this Court, which was allowed in open court by the presiding judge.

Record, p. 252.

ASSIGNMENT OF ERRORS.

Appellants assign as error—

First. The decree of the Circuit Court disallowing the amended bill of complaint, shown on page 148 of the record.

Second. The final decree, in so far as it refused appellant's motion to amend their original bill of complaint at the hearing.

Third. The final decree dismissing complainant's bill.

Fourth. The final decree rendered.

Record, p. 251.

FIRST.

The bill was filed on the well established principle that the assets of a corporation, including unpaid stock subscriptions, are a trust fund for the benefit of corporate creditors, upon which they have a lien in equity, and that the directors have no power to waste or dispose of this trust fund.

This doctrine was said by Mr. Justice Miller, for this Court, in *Sawyer vs. Hoag*, 17 Wallace, 610, 620, to be then of modern date. It has since been so often reiterated and affirmed in this Court that I shall content myself with quoting it from the opinion in *Sanger vs. Upton*, 91 U. S., 56, 60, and the citation of a few of the authorities.

In this case Mr. Justice Swayne, for this Court, states the rule with great force and clearness. He says: "The capital stock of an incorporated company is a fund set apart for the payment of its debts. It is a substitute for the personal liability which subsists in private copartnerships. When debts are incurred, a contract arises with the creditors that it shall not be withdrawn or applied, otherwise than upon their demands, until such demands are satisfied. The creditors have a lien upon it in equity. If diverted, they may follow it as far as it can be traced, and subject it to the payment of their claims, except as against holders who have taken it *bona fide* for a valuable consideration and without notice. It is publicly pledged to those who deal with the corporation, for their security. Unpaid stock is as much a part of this pledge, and as much a part of the assets of the company, as the cash which has been paid in upon it. Creditors have the same right to look to it as to anything else, and the same right to insist upon its payment as upon the payment of any other debt due to the company. As regards creditors, there is no distinction between such a demand and any other assets which may form a part of the property and effects of the corporation."

Upton vs. Tribilcock, 91 U. S., 47.
Scovill vs. Thayer, 105 U. S., 150.
Handley vs. Stutz, 139 U. S., 417, 427.
Fogg vs. Blair, *id*, 118.

This doctrine is fully recognized in Alabama.

Bank vs. St. John, 25 Ala., 566, 610, 611, 612.
Smith vs. Huckabee, 53 Ala., 191.
M. & W. P. R. R. vs. Branch, 59 Ala., 539.

SECOND.

Where a corporation has wrongfully disposed of its assets or is wasting them, or is insolvent, or where there has been a practical dissolution, a creditor at large of the corporation may maintain a bill to enforce his lien upon the assets and have a receiver appointed to protect the trust fund.

2 Mor. on Corp., secs. 797, 798, 799.
2 Story Eq., sec. 1252 a.
Perry on Trusts, sec. 242.
Beach on Receivers, sec. 416.
Bank vs. St. John, 25 Ala., 566, 618.
Conro vs. Gray, 4 How. Pr., 166.
Fisk vs. Union Pacific R. R. Co., 10 Blatchf., 518.
Coal Co. vs. Edwards, 103 Ill., 472.
Evans vs. Coventry, 1 D. M. & G., 910.
Kearns vs. Leaf, 1 H. & M., 707.
Re State Fire Ins. Co., *id*, 466.
Sanger vs. Upton, 91 U. S., 60.
Terry vs. Tubman, 92 U. S., 156.
Terry vs. Anderson, 95 U. S., 636.
Mellin vs. Moline Iron Works, 131 U. S., 352, 367.
Cook on Stockholders, sec. 200, 1st ed.

This doctrine is recognized by the authorities, and stated by Mr. Morawetz in the sections I have cited, to be the well settled rule of law.

In the *Bank of St. Mary's vs. St. John*, *supra*, a leading case in Alabama, the bill was filed by a general creditor of a corporation, and the objection was there made that it was necessary that the creditor should first exhaust his legal remedies.

In answer to this, the court says (page 619): "It is also clear, that as to the creditors, these directors and agents are trustees and as such liable to account with them for such sums as may have been lost by their mismanagement, or misapplied by themselves, and in this respect the Chancery Court may afford relief independent of the act of 1846." The act of 1846, referred to, authorized a creditor to file a bill to subject property fraudulently conveyed without first obtaining a judgment.

In *Terry vs. Anderson*, *supra*, on page 636, this Court says: "Ordinarily, a creditor must put his demand into judgment against his debtor and exhaust his remedies at law before he can proceed in equity

to subject choses in action to its payment. To this rule, however, there are some exceptions; and we are not prepared to say that a creditor of a dissolved corporation may not, under certain circumstances, claim to be exempted from its operation. If he can, however, it is upon the ground that the assets of the corporation constitute a trust fund which will be administered by a court of equity in the absence of a trustee; the principle being that equity will not permit a trust to fail for want of a trustee."

The lien and trust exist in equity; and the right of the creditors to follow the fund follows under general jurisdiction of equity to enforce liens and administer trusts.

In *Mellin vs. Moline Iron Works*, *supra*, where the question was whether the Circuit Court of the United States had acquired jurisdiction of a bill filed by the general unsecured creditors of an insolvent corporation against it to subject its assets to the payment of their debts, the principle is clearly recognized by this Court.

Mr. Justice Harlan, delivering the opinion of the Court, says (page 357): "Besides, the removal of alleged liens or incumbrances upon property, the closing up of affairs of insolvent corporations and the administration and distribution of trust funds are subjects over which courts of equity have general jurisdiction."

The right of a general creditor to come into equity has been distinctly recognized in the case of co-partnership creditors, on the same principle, that the partnership assets constitute a trust fund for the benefit of partnership creditors.

Tappan vs. Evans, 11 N. H., 311.
Holt vs. Bancroft, 30 Ala., 193.
Case vs. Beauregard, 101 U. S., 688, 691.
Innes vs. Lansing, 7 Paige, 583.

In *Holt vs. Bancroft*, *supra*, which was a bill filed by a general creditor to have a deed of trust, executed by an insolvent co-partnership, declared a general assignment under the provisions of the Alabama statutes, the court says (page 204): "Exhausting the remedy at law was not necessary to enable the complainants to file the bill in this case. The creditors were by the general assignment invested with a lien and had therefore a right to file this bill for the purpose of removing an obstacle in the way of the execution of the trust for their benefit."

In *Case vs. Beauregard*, *supra*, which was a bill filed by a general creditor of a co-partnership to subject the partnership assets to the satisfaction of his debt, this Court says (page 691): "It may be said

that whenever a creditor has a trust in his favor, or a lien upon property for the debt due him, he may come into equity without exhausting legal processes or remedies," citing *Tappan vs. Evans*, 11 N. H., 311; *Holt vs. Bancroft*, 30 Ala., 193.

In *Innes vs. Lansing*, *supra*, Chancellor Walworth expressly recognizes the doctrine I contend for.

The case here made by the bill and the proof was, that of a corporation owing more than $200,000 of unsecured debts, which had issued $500,000 of bonds, without consideration, to its stockholders, and these stockholders, through the aid of a trustee, one of their number, were proceeding to foreclose a mortgage given to secure these bonds, and thereby absorb the entire assets of every kind and description belonging to the corporation; that these same stockholders were then indebted to the corporation upon their stock subscriptions which they had never paid, and that the trustee who filed the bill in the Circuit Court of the United States, was, at the time the bill was filed, indebted on stock subscriptions for more than $58,000.

It is shown by the evidence that, in fact, there were subscriptions made for $750,000, and that the stockholders, at the time the bill was filed by the trustee, had, in fact, paid on account of these subscriptions but $115,000, assuming that the bonds held by them were valid for any purpose. It was further alleged and shown that the corporation had executed the mortgage to secure these bonds in 1882; that the debts of the complainants were contracted in the years 1886 and 1887, in ignorance of the terms on which the bonds were issued; that, on the 29th of July, 1887, after complainants' debts were contracted, this trustee had demanded, under the provisions of the mortgage, a deed of further assurance, and that the corporation did, on that day, execute a further assurance, not only conveying and assuring the property which had been conveyed by the original mortgage, but all the other assets and property which it then possessed, of every kind and description, including the unpaid stock subscriptions due by its stockholders; that the holders of the bonds and the stockholders were the same persons, except as to $22,000 of bonds; that, on the 2d day of August following the execution of the deed of further assurance, this trustee had demanded the possession of the entire property of the corporation of every kind and description, and the same had been surrendered to him, and, on the next day, this trustee had filed a bill in the Circuit Court of the United States for the Middle District of Alabama, asking the Court to aid him in the administration of his trust; that thereafter, on the 11th of August, the Company answered, admitting all the allegations in the trustee's

bill to be true, and thereafter this trustee, under the orders of the Court, to enable him to conduct the operations of the Company, had borrowed $67,000 on trustee's certificates, which were made a first lien on the property.

It is insisted that the bonds and mortgage are fraudulent and void as to creditors, and that the trustee took possession of the property and filed a bill for the purpose of hindering and delaying the creditors of the Company.

If the propositions of law I have asserted are sound, the equity of the original bill is clearly established. The purpose and object of the bill is to follow and preserve the corporate assets, upon which the creditors have a lien and as to which the directors are trustees, and this fund the trustees are wasting and converting. Under the allegations of the bill, at least a clear case of illegal diversion of corporate assets is asserted, and the right of the creditors to follow these corporate assets follows.

THIRD.

Corporate creditors have the right to follow corporate assets withdrawn, or capital abstracted.

2 Morawetz Corp., secs. 790, 792–827.
Sawyer vs. Hoag, 17 Wall., 610.
Sanger vs. Upton, 91 U. S., 60.
Upton vs. Tribilcock, *id*, 47.
Chicago R. R. vs. Third Natl. Bank, 134 U. S., 276, 286.

The facts developed in this case leave no doubt of the hopeless insolvency of this corporation unless these stockholders were liable upon their subscriptions.

Means vs. Dowd, 128 U. S., 281.

And if they are liable, then a clear case of unlawful conversion of the assets is shown.

By the mortgage and deed of further assurance, the corporation was "civilly dead," as is said in *Mellin vs. Moline Iron Works*, and had deprived itself of the means of performing its corporate functions.

Slee vs. Bloom, 19 Johns., 477.
Cent. Asso. vs. Ala. G. L. Ins. Co., 70 Ala., 120, 134.
Graham vs. Railroad Co., 102 U. S., 148, 161.
Wabash, St. L. & Pac. Rwy. Co. vs. Hain, 114 U. S., 587, 594.
Mellin vs. Moline Iron Works, 131 U. S., 352, 366.

FOURTH.

The subscriptions to stock in an Alabama corporation must be construed according to the laws of Alabama.

Glenn vs. Liggott, 135 U. S., 533.
Hancock vs. Louisville Railroad, 145 U. S., 409, 415.
Miller vs. Ammon, *id*, 421, 423.

The bill alleges that the bonds were issued without any consideration and were fictitious. The proof shows, and the defendants contend, that they made an original subscription to the capital stock of the corporation whereby they were to receive, for every nine hundred dollars paid in, one thousand dollars of the capital stock of the corporation and one first mortgage bond for one thousand dollars, payable thirty years after date, with six per cent. interest.

The constitution of Alabama, then in force, contains the following provision: "No corporation shall issue stock or bonds except for money, labor done, or money or property actually received, and all fictitious increase of indebtedness shall be void."

Const. 1875, Art. XIV, sec. 6.

There was also in force in 1882, when this corporation was organized, a statute as follows: "Neither stock nor bonds shall be issued by any private corporation except for money, labor done, or money or property actually received, and all fictitious increase of stock and indebtedness shall be void."

Sec 2035, Code of 1876.

These constitutional and statutory provisions have been frequently passed upon by the Supreme Court of Alabama, and they have declared their meaning to be that neither stock nor bonds can be issued by a corporation under the constitution and laws of this State, except for their fair equivalent value received by the corporation.

By section 1816 of the Code of Alabama, 1876, it is provided that no stock shall be issued until fully paid for.

The constitutional and statutory provisions which I have quoted were first passed upon by the Supreme Court of Alabama in *Fitzpatrick vs. Dispatch Publishing Co.*, 83 Ala., 604. In that case a majority of the stockholders of the corporation undertook to increase its capital stock, based on an increased value of the corporate assets. A minority creditor filed a bill to enjoin the issue of this stock. The Court below having refused to issue the injunction, complainant appealed to the Supreme Court. The Chief Justice says (page 606): "The constitution in terms inhibits the issue of fictitious stock, that is, stock

which has no valuable thing or corporate assets to rest on, and of which it is the representative. If it represents nothing, and has nothing to stand on, it is fictitious, it is fraudulent, it is unconstitutional."

Again, on page 607, he says: "It behooves constituted authority to keep well abreast with the many inventions which modern cupidity has wrought out, and which, perhaps, more than any other agency, have called into exercise pernicious principles which threaten the overthrow of organized government. In this highly conservative, yet restraining spirit, the principle, constitutional and statutory, on which this case mainly hinges, had its origin and finds its justification. Let us not, by timid interpretation, impair the strength of this bulwark, erected by our constitution makers against the frauds which have become the reproach of the age we live in."

In *Williams vs. Evans*, 87 Ala. 726, the plaintiff had subscribed for $2,500 of stock in the Decatur Land Company, with the understanding that the company was to issue to him $5.00 for $1.00 of subscription. The plaintiff sold $1,000 of the original stock to the defendant and gave him an order on the company for fifty shares of stock, and action was brought to recover on a bill of exchange which the defendant had given for this transfer of the subscription for ten shares of stock. The plaintiff had judgment. The court on appeal reversed this judgment, and, after quoting the section of the constitution above cited, Mr. Justice Somerville says: "One of the purposes of this clause of the constitution was to protect the public, as well as stockholders, against spurious and worthless stock by the process of *watering*—in other words, from fraudulently issuing and putting on the market fictitious corporate stock, which is based on nothing valuable as a consideration for its issue. *Fitzpatrick vs. Dispatch Pub. Co.*, 83 Ala., 604; *Memphis & Little Rock R. R. Co. vs. Dow*, 120 U. S., 287; *Peoria & Springfield R. R. Co. vs. Thompson*, 103 Ill., 187. It is greatly to the interest of the public that the policy of this provision should be enforced. We repeat that the present contract is in violation of this provision of the constitution and is void."

Again, in *Tutwiler vs. Tuskaloosa Coal Co.*, 89 Ala. 399, the court *arguendo* affirmed the previous decisions.

In *Davis vs. Montgomery Furnace Company*, 8 So. Rep., 496, the right of a corporation to issue stock and bonds for one subscription is expressly denied. The court, there, says (page 497): "If the capital stock of the company had not been paid for and issued, but remained in the corporation to be issued, and then had been issued as a bonus by the corporation to subscribers for the first mortgage bonds, or if the bonds were to be or had been issued as a bonus by the corporation to

subscribers for the capital stock, in either case, that issued as a bonus would be regarded as a fictitious issue, and in violation of Article XIV, section 6, of the constitution. 87 Ala.; 6 South. Rep. and 89 Ala.; 7 South. Rep., *supra*."

Again, in *Parsons vs. Joseph*, 92 Ala., 403, which was a bill filed by Joseph to have certain certificates of stock issued to Parsons and another by a railroad company of which they were each stockholders, cancelled on the ground that it was fictitious and was issued in violation of the constitution and statute law of the State, the case made by the bill was that the defendant had subscribed for 107 shares of the capital stock of the company of the par value of $50 each, and paid for the same in full by conveying to the company thirty-nine acres of land at an agreed price and valuation of $137 per acre, when in fact the land was not worth more than $25 an acre, and for this land Parsons was to receive 107 shares of the capital stock; that shortly thereafter, the capital stock was doubled, and without any other consideration than the amount mentioned, Parsons' stock was doubled and he received 214 shares of the capital stock. The court below overruled a demurrer, and on appeal the Supreme Court, through Mr. Justice Coleman, says (page 406): "If the averments of the bill are sustained by proof, the stock issued to the defendants was in violation of section 1662 of the code, and of section 6, Article XIV, of the constitution," and affirmed the judgment of the court below.

In *Elyton Land Company vs. Birmingham Warehouse & Elevator Company*, 92 Ala., 407, the Supreme Court of Alabama reaffirmed all of these previous decisions, and held that where a subscriber had undertaken to pay his subscription to the capital stock in property at a fictitious valuation, that he was liable at the suit of a creditor for the difference between the actual value of the property conveyed and the face value of his stock subscriptions.

These decisions being constructions of the constitution and statutes of Alabama, are binding on the Federal Courts.

Flash vs. Conn, 109 U. S., 371.

Chase vs. Curtiss, 113 U. S., 458.

Independently of any constitutional or statutory provision, it has been held in Tennessee that a subscription to the capital stock of a corporation which provides that the subscriber shall receive the first mortgage bonds for the amount of his subscription in addition to the stock, is void as against public policy so far as the issue of the bonds is concerned, but binding the stockholder to pay the amount of his stock subscriptions.

Morrow vs. Nashville Iron & Steel Co., 87 Tenn., 262.

This Court has recently, in *Handley vs. Stutz*, 139 U. S., 417, affirmed this Tennessee case and asserted the doctrine which I now contend for. It was there held, that in the absence of any statute forbidding such a transaction, an active corporation, or going concern, might "for the purpose of recuperating itself and providing new conditions for the successful preservation of its business, issue new stock, put it upon the market and sell it for the best price that can be obtained, whether it was issued as a bonus with bonds or otherwise."

But there was also in that case another class of stockholders who received $30,000 increased stock as a gift, and they insisted that they were not liable because they had not subscribed for the stock, and that the same had been issued as fully paid, and free from all claims or demands on the part of the company, but this Court, through Mr. Justice Brown, says: "The stock of a corporation is supposed to stand in the place of actual property of substantial value." And again, "If it be once admitted that a corporation may issue stock without receiving a consideration therefor, and where it does not represent actual or substituted value in corporate assets, there is apparently no limit to the extent to which the original stock may be watered, except the caprice of the stockholders." Page 428.

In this decision the court draws the distinction between original subscriptions and a sale of stock by a going concern at less than its par value, and expressly affirms the doctrines declared in *Morrow vs. Nashville Iron and Steel Co.*, that the contract of original subscription where the subscriber was to receive stock and bonds is void as against creditors, and also as between the subscriber and the corporation.

In *Camden vs. Stuart*, 144 U. S., 104, 113, Mr. Justice Brown, delivering the opinion of this Court, very clearly draws the distinction stated in *Handly vs. Slutz*, and reaffirms the proposition that original subscribers would be liable to creditors.

In the Tennessee case, a bill was filed by a subscriber against the corporation to compel the issue by it of the bonds he had subscribed for, and the court not only refused the relief sought, but declared the subscriber was liable on his stock subscription.

This Tennessee case further holds that, as the resolution authorizing the bonds was passed after the subscription, it was entirely without consideration, and the subscription, so far as the bonds are concerned, is void.

Richardson vs. Green, 133 U. S., 30, is directly in point. There, Richardson claimed to be the owner of a large amount of bonds in a railroad company. Of the 4,200 shares of stock of the railroad company, the original incorporators subscribed 210 shares each, and paid

five per cent. on the subscription. This was all the stock subscribed and all the money paid in on any stock. For the purpose of raising funds to build the road, the company issued $550,000 seven per cent. bonds and executed a mortgage to secure them. In order to raise money on the bonds, they were sold at the rate of two dollars in bonds for every dollar borrowed, and a large amount of capital stock was given as a bonus to these purchasers. Richardson loaned the railroad company one hundred thousand dollars, on which he obtained the first two hundred bonds as collateral. After that, he made a contract by which the company agreed to deliver him two hundred thousand dollars of first mortgage bonds, of one thousand dollars each, elect him a director, and, in addition to other things, to execute and deliver to him 1250 fully paid shares of the capital stock, of $100 each. This stock was issued and Richardson became the largest stockholder in the company. After this, to secure some other small advances made by him, the company issued to Richardson 300 additional mortgage bonds. Richardson was a director of the company and was afterwards elected president. Under a resolution of the board of directors, he deposited 2,985 of these bonds with a safety deposit company in New York. Four hundred of these bonds Richardson appropriated to himself. On July 8th, 1876, the board of directors, in anticipation of the foreclosure of the mortgage, passed resolutions auditing the entire account of Richardson against the company and declaring the entire sum due him to be $185,584.18. Another resolution, unanimously adopted, ratified and approved the bonds issued to him for that aggregate sum. The third resolution directed the secretary to execute and deliver to him the notes of the company, at seven per cent., payable at such times as could be agreed on with Richardson, and that there should be embodied in the note an authority to the holder, in default of payment, to sell such bonds without notice, and with the right to become, himself, the purchaser, if sold at public sale. These notes were executed on that day, in which the numbers of six hundred of the bonds were recited.

On the same day Richardson, and Ferry, the secretary, requested the mortgage trustees to foreclose the mortgage. The notes given to Richardson were, at his request, taken up, on the 17th of July, and demand notes substituted for them. Richardson thereupon commenced suit in New York on these notes, and, under an execution issued on the judgment in that suit, the sheriff levied upon and sold all the bonds held by Richardson, amounting to 3,574, Richardson becoming the purchaser. In the foreclosure proceeding Richardson only claimed for 1,705 of the bonds. The Master allowed Richardson

for 200 bonds and rejected his claim as to the others. The Circuit Court sustained the report of the Master, and this Court affirmed the decree below.

Mr. Justice Lamar, for the Court, says (page 43): "Richardson's relation to the subject matter of this controversy was three-fold—

"1. That of a creditor of an insolvent corporation, claiming for his debt priority of payment over those of all other creditors out of the fund arising from a foreclosure sale of the mortgaged property. 2. That of a director and officer of that corporation at the time his debt against it was created; and (3) that of the largest shareholder of its capital stock." * * * * * * * * * *

"In relation to the rights and liabilities of a stockholder, this court said, in *Sawyer vs. Hoag*, 17 Wall., 610, 620, Mr. Justice Miller also delivering the opinion of the court: 'We think it now well established that the capital stock of a corporation, especially its unpaid subscriptions, is a trust fund for the benefit of the general creditors of the corporation.' Proceeding to show that this trust cannot be defeated by a simulated payment of the stock subscription, nor by any device short of an actual payment in good faith, he concluded with these words: 'It is, therefore, but just that, when the interest of the public or of strangers dealing with this corporation is to be affected by any transaction between the stockholders who own the corporation and the corporation itself, such transaction should be subject to a rigid scrutiny, and if found to be infected with anything unfair towards such third person, calculated to injure him, or designed intentionally and inequitably to screen the stockholder from loss at the expense of the general crrditor, it should be disregarded or annulled so far as it may inequitably affect him.' In the case last cited the stockholder nominally paid the stock subscription, but the money was immediately taken back as a loan, and it was claimed by him as a valid payment. The transaction was characterized by the court as 'a fraud upon the public who were expected to deal with them'."

The court further declared that the issue of the stock to Richardson was illegal and fraudulent, and further say (page 46): "The total amount of the advances made by him for which these bonds are collateral, is very little larger than one-half of the amount of the stock which he had as paid up stock. *If the stock given to him and the Philadelphia parties had been really paid up stock, there would have been no insolvency on the part of this corporation.*"

"Irrespective of the question whether he can be made liable for the face amount of this stock, or for its proved value, the facts we have detailed certainly do not entitle his claim to outrank that of any *bona*

fide creditor whether secured or unsecured, in the matter of distribution."

The italics are mine.

But I need not further dwell on this subject, for the Supreme Court of Alabama, in a case not yet officially reported, where the identical facts here established were alleged against this same corporation, has expressly decided that this whole issue of bonds was in direct violation of the constitution and statutes of Alabama, and the bonds and mortgages and proceedings to enforce them were fraudulent and void as to creditors. Mr. Justice Coleman, for the court, in an elaborate and learned opinion, states the facts fully, and the learned Chief Justice writes a concurring opinion and also the opinion of the court denying an application for a rehearing.

Gay vs. Brierfield Coal and Iron Co., 11 So. Rep., 353; S. C. 16 Lawyers' Rep. Ann., 564.

FIFTH.

Where a corporation is insolvent, and its directors, or some of them, are among its creditors, every device resorted to for the purpose of giving the directors a preference over other creditors is fraudulent and void as to them.

Hopkins' Appeal, 90 Pa. St., 69.
Smith vs. Putnam, 61 N. H., 632.
Adams vs. Kehlor Milling Co., 35 Fed. Rep., 433.
Richards vs. New Hampshire Ins. Co., 43 N. H., 263.
Haywood vs. Lincoln Lumber Co., 64 Wis., 639, 59 Am. Rep., 466.
Sweeney vs. Grape Sugar Co., 3 W. Va., 443.
Beech vs. Miller, 130 Ill., 162.
Lippincott vs. Shaw Carriage Co., 25 Fed. Rep., 577, 586.
Koehler vs. Black River Falls Iron Co., 2 Black, 715, 720.
Drury vs. Cross, 7 Wall, 299, 305.

In *Hopkins' Appeal*, the Chester Valley Wheel & Axle Company a corporation, became embarrassed and executed to Hopkins and Johnston, who were the directors, president, and secretary and treasurer of the company, two notes on which they procured judgments and levied on the corporate property in advance of the other creditors. Under proceedings peculiar to the Pennsylvania practice, the question of the distribution of the proceeds of the sales under executions issued on

these judgments between Hopkins and Johnston and the other creditors of the company was presented.

Mr. Justice Mercur held that "the proceedings of Hopkins and Johnston, acting together as before stated, were, under the circumstances and in the insolvent condition of the company, a fraud in law on the other creditors."

In *Haywood vs. Lincoln Lumber Company*, the company executed a mortgage to Murray Haywood, George Haywood, Jr., and T. P. Matthews and one George C. Smith. All these parties were, at the time the mortgage was given, directors of the company—Matthews being president and George Haywood, Jr., the secretary and treasurer. The suit was brought to foreclose this mortgage. Parcher, who was afterwards appointed receiver of the company, was a defendant.

The Court says (page 646): "There was abundant evidence to to justify the finding of the Circuit Court, that, at the time it was given, the company was insolvent. In such case, the authorities seem to be uniform that the directors and officers of the corporation are trustees of the creditors, and must manage its property and assets with a strict regard to their interests; and, if they are themselves creditors, while the insolvent corporation is under their management, they cannot secure to themselves any preference or advantage over other creditors. The directors are then trustees of all the property of the corporation for all of its creditors, and an equal distribution must be made and no preference to any of the creditors, and much less to the directors or trustees, as such."

In *Beech vs. Miller*, which is also reported in 17 Am. St. Rep., 291, the most of the cases cited are reviewed by the Court, and the others will be found in the note to that case (page 307).

In this case there had been a sale of a part of the corporate assets to Miller, one of the directors, in satisfaction of his debt, and it was there held, to use the words of the Court, "After a careful examination of the authorities, we are inclined to the opinion that, if this corporation was insolvent at the time of the sale, Miller, who was a director, could not lawfully purchase the property in satisfaction of his own debt to the exclusion of other creditors, but he took the property charged with the trust in favor of other creditors, which may be enforced in an appropriate action."

In *Adams vs. Kehlor Milling Co.*, Kehlor, in his lifetime, had been a director in the corporation, also president snd its largest and most influential stockholder. He had, at various times, loaned to the company, $21,500, which was unsecured at the date of his death. The company became insolvent, and thereafter the directors—consisting of

three persons, two of whom were brothers of Kehlor, and the third the agent of his estate—pledged certain of the personal property of the company and raised $5,000, which was applied to the Kehlor debt, and subsequently passed a resolution to make the balance of the debt a mortgage lien on the mill and real estate, and afterwards executed a mortgage for that purpose.

The Court says (page 435): "The case seems to fall fairly within the rule which prohibits directors, when a corporation is insolvent and about to go into liquidation, from preferring debts due to themselves from the corporation, or from preferring debts in the payment of which they have a personal interest. It may be conceded that a corporation, though insolvent, has the power to prefer creditors, but the relation which directors bear to the corporation as trustees of its assets is such that they cannot lawfully exercise the power in question for their personal advantage. *Koehler vs. Black River Falls Co*, 2 Black, 730; *Drury vs. Cross*, 7 Wall., 299; *Bradley vs. Farwell*, 1 Holmes, 433; *Corbett vs. Woodward*, 5 Sawy., 417–419; *Richards vs. Insurance Co.*, 43 N. H., 263; *Lippincott vs. Carriage Co.*, 25 Fed. Rep., 586, and cases cited."

In *Koehler vs. Black River Falls Iron Co.*, which may now be regarded as the leading case on the subject, certain directors of the company undertook to secure their debts out of the assets of an insolvent corporation by means of a mortgage on its property. A stockholder was admitted to defend in the proceeding to foreclose.

This Court, through Mr. Justice Davis, characterizes the transaction and declared the law as follows (p. 720): "Instead of honestly endeavoring to effect a loan of money, advantageously, for the benefit of the corporation, these directors, in violation of their duty, and in betrayal of their trust, secured their own debts, to the injury of the stockholders and creditors. Directors cannot thus deal with the important interests entrusted to their management. They hold a place of trust, and by accepting the trust are obliged to execute it with fidelity, not for their own benefit, but for the common benefit of the stockholders of the corporation. In executing this mortgage and thereby securing to themselves advantages which were not common to all the stockholders, they were guilty of an unauthorized act, and violated a plain principle of equity applicable to trustees."

In *Drury vs. Cross*, where the directors of a railroad secured, by collusion with the creditors and purchasers, a sale of the property of a railroad, far below its value, and by the arrangement the directors escaped liability on endorsements which they had made for the railroad

company, at the suit of a creditor, the decree of foreclosure was set aside as fraudulent as against creditors.

"The scheme," says the Court, through Mr. Justice Davis, "to acquire the property of this corporation was, in its inception, fraudulent, and every step in the progress of its execution was necessarily stamped with the same character. There is nothing in this record to mitigate the conduct of the defendants, who purchased the Milwaukee and Superior Railroad. They knew the road was abandoned, the company insolvent, the complainants unpaid for property then in the possession of the corporation, and yet they combine with timid and unfaithful trustees to get not only *this*, but all the property of the corporation, and adopted a plan to carry out their project, which resulted in raising the decree to an extent that would necessarily prevent all fair competition. The fruits of such an adventure cannot be enjoyed by the parties concerned in it."

In *Lippincott vs. Shaw Carriage Co.*, the Court says: "It has been decided in a number of cases that preferences given by insolvent corporations, in such manner as to be of special benefit to the directors, or managing agents, or any of them, will be set aside. This, as it seems to me, is the salutary rule, and the only rule which can be administered with uniformity and fairness."

SIXTH.

The original subscription of $375,000 stands on the books of the company unaffected and unsatisfied, and the company and shareholders were both prohibited from diverting or distributing these assets to the prejudice of either existing or subsequent creditors.

2 Morawetz Corp., §§ 824, 841.
Upton vs. Tribilcock, 91 U. S., 45, 48.
Sawyer vs. Hoag, 17 Wall., 610.
County of Morgan vs. Allen, 103 U. S., 498.
Morgan vs. Struthers, 131 U. S., 246, 254.
Fogg vs. Blair, 139 U. S., 118, 125.

In *Upton vs. Tribilcock*, Mr. Justice Hunt, for this court, says: "Equally unsound is the opinion that the obligation of a subscriber to pay his subscription may be released or surrendered to him by the trustees of the company. This has often been attempted, but never successfully. The capital paid in, and promised to be paid in, is a fund which the trustees cannot squander or give away. They are bound to call in what is unpaid, and carefully to husband it when received."

The same doctrine is reiterated in *County of Morgan vs. Allen*, *supra*, page 502.

In *Morgan vs. Struthers*, this Court, through Mr. Justice Lamar, says (page 254), referring to the authorities which have been read by the counsel for the defendant in error: "Those which relate to contracts connected with subscriptions of stock are simply illustrative, in different forms, of a doctrine settled in a great number and variety of decisions, that a corporation has no legal capacity to release an original subscriber to its capital stock from payment of it, in whole or in part; and that any arrangement with him by which the company, its creditors or stockholders, shall lose any part of that subscription, is *ultra vires* and a fraud upon creditors and the co-subscribers."

In *Fogg vs. Blair*, the doctrine is again affirmed and the authorities collected.

In this connection, it may not be inappropriate to refer to the fact that the directors have never undertaken to rescind or modify this original subscription, which was made and reported to the Judge of Probate of Bibb county and which was the basis of the original organization.

SEVENTH.

All the payments made by subscribers were on account of bonds and the stock which was to accompany these bonds as a bonus. These payments do not go to discharge the first subscription, and the liability on these subscriptions cannot be applied by the stockholders to the payment of the bonds if they were valid, nor can they set off the bonds against this liability.

Sawyer vs. Hoag, *supra*.
Sanger vs. Upton, *supra*.
Scammon vs. Kimbell, 92 U. S., 362.
County of Morgan vs. Allen, *supra*.
Scoville vs. Thayer, 105 U. S., p. 152.
2 Morawetz, Corp., sec. 781.

In this connection, I assume the invalidity of the further assurance as a conveyance of the unpaid stock stock subscriptions, for the reason which I shall hereafter give. But even if the corporation had the power to execute the further assurance under the statutes of Alabama, I do not think under the authorities that these stockholders and directors could appropriate these unpaid stock subscriptions due by themselves to the payment of their own debts.

In *Scoville vs. Thayer*, the question was presented as to whether a creditor of an insolvent corporation might set off his debt against his liability for a stock subscription, and it is there denied. "The ground upon which this rule stands," says Mr. Justice Woods for the court, "is thus stated by Mr. Justice Miller in Sawyer vs. Hoag: "The debt which the appellant owed for his stock was a trust fund devoted to the payment of all the creditors of the company. As soon as the company became insolvent, and this fact became known to the appellant, the right of set-off for an ordinary debt to its full amount ceased. It became a fund belonging in equity to all its creditors, and could not be appropriated by the debtor to the exclusive payment of his own claim."

The principle is also recognized in *Richmond vs. Irons*, 121 U. S., 27, where the creditors of an insolvent National Bank, which was in course of liquidation, received in settlement of their claims bills receivable, endorsed and guaranteed by the president of the bank, and undertook to prove these endorsements against the assets of the bank, and the court held that it could not be done.

2 Morawetz on Corporations, sec. 795: "The directors of a corporation are under no positive obligation to creditors, except in the event of the company's insolvency. If, however, the directors should misappropriate or divert any portion of the company's capital and thereby cause a loss to existing creditors, they would be liable, like any other wrong-doer, to make equitable compensation. If a corporation has become insolvent, its directors are under a positive obligation as *quasi* trustees to manage the trust in their hands with strict regard for the equitable rights of the creditors, and they would be liable in equity to make good any loss to creditors resulting from negligence or bad faith in discharging this obligation."

If it be conceded that a corporation may prefer some of its creditors, it is at the same time true, that upon insolvency or dissolution it is the plain duty of the directors as trustees to collect its assets and distribute them among its creditors.

Glenn vs. Semple, 80 Ala., 159, 161.
Cases *supra*.

As I have shown, it is contrary to principle that the trustee may use his position to secure himself at the expense of his *cestui que trust*, and it has been expressly decided that the directors of a corporation on insolvency become express trustees for creditors who have claims against the company as creditors, and must share ratably with the other creditors in the distribution of the company's assets.

Bradley vs. Fowler, 1 Holmes, 433.

Hawkin's Appeal, 90 Pa. St., 69.
Richards vs. New Hampshire Ins. Co., 43 N. H., 263.
Smith vs. Lansing, 22 N. Y., 521.
Corbett vs. Woodward, 5 Sawyer, 403.
Stout vs. Yaeger Milling Co., 13 Fed. Rep., 802.
Beech vs. Miller, 130 Ill., 162; S. C. 17 Am. St. Rep., 291.

If the stockholders or directors may, by their own act, appropriate their unpaid stock subscriptions to the payment of their own debts successfully, then they are able to do indirectly what the law would not otherwise permit. For, whereas, they could not set off these claims by their bonds, they may, in anticipation of the claims being made, appropriate the entire assets, consisting of their unpaid stock subscriptions, to the satisfaction of these bonds, and upon a claim made by the creditors plead the payment successfully, although the set-off could not be maintained.

EIGHTH.

The mortgage of 1882 is a direct violation of the statute, which limits the right of a corporation to mortgage to two-thirds of the capital stock, unless it be held that the capital stock is $750,000, and the bonds are invalid in the hands of any but a *bona fide* holder, and no stockholder of the corporation could be a *bona fide* holder because he was charged with knowledge of the facts. Being an integral part of the corporation, he is charged with notice of its proceeding.

Hackensack Water Co. vs. DeKay, 36 N. J. Eq., 548.
Jones on R. R. Securities, secs. 190–194.
2 Morawetz Corp., sec. 792.
Hawkins vs. Glenn, 131 U. S., 319.
Liggott vs. Glenn, 135 U. S., 533, 544.

The statute of Alabama then in force, authorizing a corporation such as the Brierfield Coal and Iron Company to issue bonds and execute mortgages, is to be found in section 1812 of the Code of 1876, which I have quoted at length on page 12. This section authorizes such corporation to borrow money, to make notes, bonds, or other evidences of debt, and, by a majority vote of the stock, after notice as required by law, authorizes the execution of a mortgage or deed of trust to secure these notes or bonds, "but in no case shall the debts thus created and secured exceed two-thirds of the amount of the capital stock, unless the capital stock is all paid; then such secured debt may be to the extent of the stock."

This statute has never been construed in Alabama. Its purpose seems to be to prevent the creation of debts and securing them by mortgage for a greater sum than two-thirds of the capital stock, because otherwise the proviso that the debts secured may equal the capital stock when it is all paid, would have no field of operation. If the capital stock paid in is only one-half of the authorized capital, then to say that the corporation could issue a mortgage loan for the whole amount of the capital stock authorized, would be to give to a corporation paying less than the whole capital subscription, privileges which it would not enjoy if the whole capital were paid in. In other words, if the whole capital is paid in, then it may contract debts for a sum equal to the amount paid; but, if only half of the proposed capital is paid in, then it may create debts in excess of the capital paid. It is thus manifest that the statute, in using the words "capital stock," means capital stock paid. If less than all of the capital stock was paid, then the right to mortgage is limited to two-thirds. If it is all paid, then the mortgage may be made to the extent of the stock. In either aspect, the execution of the first mortgage by the Brierfield Coal and Iron Company was palpably a violation of the statute.

If, as these stockholders now contend, there was only a subscription of $375,000 of the $750,000 capital, then the right to mortgage is limited to two-thirds of that, and, in that event, the bonds and mortgage would be a plain violation of the statute, and these stockholders holding the bonds would be charged with notice of their illegality, and could not be *bona fide* holders, even if they had paid value for the bonds. The undisputed evidence shows that all the stock was present at the meeting which authorized the issue of the bonds and the execution of the mortgage.

If, on the other hand, as I insist, there were two subscriptions, each for $375,000, then the stockholders are put in the attitude of appropriating to the payment of the $500,000 of the bonds held by them, with the exception of twenty-two, not only their own unpaid subscription to the amount of $635,000 (for the record shows that they paid in money only $115,000 on these stock subscriptions), but, in addition thereto, the entire property and assets of the corporation—estimated by its president to be worth a million of dollars more—and creditors who trusted the corporation will not realize one dollar.

Hackensack Water Co. vs. DeKay is a case directly in point. There the principle is declared and the distinction is clearly drawn. The company was incorporated in 1869, with a capital stock of $50,000, and was authorized to organize as soon as $20,000 should be subscribed and paid in. In 1873, very little of the stock being subscribed and

less paid in, the subscribers organized and elected directors. Under the provisions of the charter, the capital stock was increased to $100,000. The company was authorized to borrow money to the extent of two-thirds of the capital paid in and secure the same by a mortgage. In September, 1873, the directors adopted a resolution authorizing the issue of 133 bonds of $500 each and the execution of a mortgage to secure them. The bonds were issued and sold and a mortgage was executed. At that time but $2,000 of the capital had been paid in.

On a bill to foreclose the mortgage, the defense was made that the bonds and mortgage were improperly and, hence, illegally issued. It was there held that, while *bona fide* holders of the bonds were not affected by the failure of the corporation, or its officers, to perform the necessary conditions, in the internal management of the corporation, to authorize the bonds and mortgage, yet that "a person taking such a security with knowledge that the conditions on which alone the security was authorized were not fulfilled, is not protected, and in his hands the security is invalid, though the imperfection is in some matter relating to the internal affairs of the corporation, which would be unavailable against a *bona fide* holder of the same security." Page 565. Citing—

In re Magdelena Steam Nav. Co., 6 Jur. (N. S.) 975.
Woodhams vs. Anglo-Australian Co., 8 Jur. (N. S.) 148.
In re South Essex Gaslight Co., *id*, 357.
In re Patent Bread Machine Co., L. R. 7 Ch. App., 289.
In re General Provident Ass. Co., L. R. 14 Eq., 507.
In re Hercules Ins. Co., L. R. 19 Eq., 302, 310.
In re International Pulp Co., L. R. 6 Ch. Div., 556, 560.
In re Native Iron Ore Co., L. R. 2 Ch. Div., 345.
In re South Amer. Co., *id*, 337.

NINTH.

The bonds being payable to bearer, are not negotiable paper under the statute of Alabama.

Blackman vs. Lehman, 63 Ala., 547.
1 Daniel Negotiable Inst., secs. 663, 879, 881.

The statute in force in Alabama when these bonds were issued and cited in the case referred to, is as follows: "All bonds, bills or notes, except those issued to circulate as money, payable to any thing

or bearer, to any fictitious person or bearer, or to bearer only, must be construed as payable to the person from whom the consideration moves; if payable to an existing person, or bearer, must be construed as if payable to such person or order." Code of 1876, sec. 2098.

The Supreme Court of Alabama, in the learned discussion in the case cited, held that under this statute a bond payable to bearer is non-commercial paper and not negotiable. Page 554.

TENTH.

The deed of further assurance executed at the request of the trustee, could not ratify the first mortgage, for the following reasons:

(*a*). The first deed was a violation of the constitution and statutes. "A fraud upon a statute is a violation of the statute."

Bank of U. S. vs. Owens, 2 Peters, 536.

(*b*). The corporation had no power to make the deed or issue the bonds, and hence could not ratify it.

2 Morawetz Corp., secs. 619, 620, 622.

(*c*). The holders of the bonds were all charged with notice of all the defects and infirmities in the bonds and mortgage.

(*d*). The bonds were issued without consideration, and when the further assurance was made, they were still unpaid for.

Skrainka vs. Allen, 76 Mo., 384.

(*e*). All the unsecured debts were contracted before the further assurance was executed.

(*f*). Subsequent payment for the bonds cannot cure their original illegality.

Bowland vs. Mayo, 8 Ala., 104, 115.

ELEVENTH.

The act to amend and ratify the charter of the Brierfield Coal and Iron Company cannot be held as a ratification of the original issue of the bonds. The act is shown at length, record p. 493.

The only part of the act which bears on the subject of bonds is section 7, which is as follows: "Be it further enacted, That such company shall have the power from time to time to issue bonds for the payment of money borrowed for its indebtedness secured by mortgage or mortgages on its property, or any portion or portions thereof."

(*a*). The act does not purport to ratify past issues of bonds.

Chew Heong vs. U. S., 112 U. S., 536.
Hayes vs. Holly Springs, 114 U. S., 120.
Grand Lodge vs. Waddell, 36 Ala., 313.
Powell vs. Simmons, 31 Ala., 552.

(*b*). The general law under which the corporation was organized was its charter.

Grangers' Ins. Co. vs. Kemper, 73 Ala., 325, 341.

(*c*). An increase of indebtedness could only be made pursuant to general laws.

Const. Alabama, Art. XIV, sec. 6.
2 Morawetz Corp., secs. 619, 620.

(*d*). The legislature had no power to suspend the operation of the general law, which was the charter of this corporation, in its favor.

Article IV, section 23, of the constitution of Alabama is as follows:

"No special or local law shall be enacted for the benefit of individuals or corporations, in cases which are or can be provided for by a general law, or where the relief sought can be given by any court of this State; nor shall the operation of any general law be suspended by the general assembly for the benefit of any individual, oorporation, or association."

Cooley's Const. Lim., 391.
Simons vs. Simons, 4 Am. Rep., 579.
Holden vs. Morris, 11 Mass., 396.
S. & N. R. R. vs. Morris, 65 Ala. 193.

TWELFTH.

The amendment offered by the complainants, which was allowed by the court and afterwards stricken out, should have been permitted to remain. Record, p. 113.

The amendment did not make a case materially or substantially different from that alleged in the original bill, and the rule declared by this court is that, where the proof in a case for relief on the ground of fraud is not materially and substantially different from the facts alleged in the bill, relief will be granted.

Tufts vs. Tufts, 123 U. S., 96.

In *Neale vs. Neales*, 9 Wallace, 1, 8, which was a case where the court of its own motion, on the hearing, gave the complainant leave to

amend, this court held that where the proof made a case which entitled the complainants to relief, although variant from the matters alleged in the bill, the court may dismiss the bill without prejudice, or grant leave to amend on the hearing. It was there insisted that the rules of equity practice prescribed by this court prevented the amendment, because replication had been filed, but says the court, through Mr. Justice Davis: "At an earlier stage, this discussion is controlled by the rules of equity practice adopted by this court, but not so upon the hearing, for there is no rule upon the subject of amendments applicable to a cause which has advanced to this point. As, therefore, leave to amend in this instance was within the discretion of the court, we will proceed to dispose of the case on its merits."

In *The Tremolo Patent*, 23 Wall., 518, 527, an amendment was allowed to a bill filed for the infringement of a patent, alleging a second re-issue, and it was insisted that the court had no power, but the court, in affirming the action of the Circuit Court, says: "The amendment deprived the defendants of no rights which they had not enjoyed during all the progress of the trial. It may well be denominated only an amendment of form, because it introduced no other cause of action than that which had been tried. It is true that an amendment which changes the character of the bill ought not generally to be allowed after a case has been set for a hearing, and still less after it has been heard. The reason is that the answer may become inapplicable if such an amendment be permitted. But in this case the defendants were not prejudiced. They had every advantage they could have had, if the bill had originally averred the second re-issue. The case is undoubtedly anomalous, but we think justice would not be subserved by denying the Circuit Court the power to order such an amendment as was made, after the cause was tried precisely as it must have been tried if the bill had originally contained the averment inserted by the amendment."

These cases have been affirmed in *Hardin vs. Boyd*, 113 U. S., 756, 764; *Graffam vs. Burgess*, 117 U. S., 180, 195, and *Richmond vs. Irons*, 121 U. S., 27, 46, 47.

THIRTEENTH.

It was insisted in the court below that by reason of the invitation to creditors to come in and prove their claims in the original bill filed by the trustee, Preston B. Plumb, which is as follows: "Orator further prays that if any of the creditors of said Brierfield Coal & Iron Company, who are not made parties defendant to this bill, or any persons

holding and asserting claims against the trust estate in the hands of orator, desire to have their rights determined in this Honorable Court, that they be permitted to make themselves parties-defendants in this cause on filing their petitions therein, setting forth their said debts, demands and claims, and that such matters shall be heard and determined in this cause" (Record, p. 263), that thereby all the creditors of the defendant corporation were bound by the decree rendered in that cause. The answer to this contention, it seems to me, is obvious. The original bill was, in effect, a bill to foreclose the mortgages; the complainants here claimed adversely to the mortgage, and could not properly be made defendants to it.

Dial vs. Reynolds, 96 U. S., 340.
Peters vs. Bowman, 98 U. S., 56, 59.
Hambrick vs. Russell, 86 Ala., 199.
I Daniel's Ch. Prac., 277, note 2; 339, note 2.
Wiltsie on Foreclosures, sec. 192.

In the case of *Gay, Hardie & Company vs. Brierfield Coal & Iron Company*, 11 So. Rep., 353, this question is elaborately discussed by the Supreme Court of Alabama, and it is there held that the decree in the cause of Plumb, trustee, did not and could not affect creditors who did not come in.

Stout vs. Lye, 103 U. S., 66, was relied upon by the other side, but the distinction between this case and that seems to me to be obvious. That case simply decides that a party who acquires the interest of a mortgagor, pending proceedings to foreclose the mortgage, is bound by the decree of foreclosure.

Respectfully submitted.

ALEX. T. LONDON,

Attorney for Appellants.

Office Supreme Court U. S.
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CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

No. 223.

HOLLINS, SONS & CO. ET. ALS.,

APPELLANTS,

vs.

THE BRIERFIELD COAL & IRON CO. ET ALS.,

DEFENDANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

ARGUMENT OF DANIEL S. TROY, OF COUNSEL FOR APPELLANTS.

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STATEMENT OF THE CASE.

This was a creditors bill filed by the appellants on behalf of themselves and all other creditors of The Brierfield Coal & Iron Company, a corporation organized under the general incorporation statutes of the State of Alabama, against the corporation, its stockholders, Preston B. Plumb, as trustee under a mortgage executed by the corporation, and certain other persons who claimed to hold liens on the property of the corporation, and certain other persons and banking corporations who claimed to be holders of bonds secured by the mortgage to Plumb. The object of the bill is to subject the property of the corporation, including unpaid subscriptions for stock, to the payment of the debts due to appellants and other creditors; and its equity is based on the allegations,

FIRST. That the corporation was insolvent and was unable to

carry on its business, having surrendered the possession and control of all of its property, assets and business to Plumb as trustee.

SECOND. That the mortgage to Plumb under which possession was surrendered to him was void as against the creditors of the corporation because the bonds secured by it were issued in violation of the laws of Alabama and were without consideration.

THIRD. That the corporation had failed and refused to collect the subscriptions to its capital stock.

Appellants were compelled to rely upon the books of the corporation, which were very badly kept, and upon the testimony of its President, T. J. Peter, and its Secretary and Treasurer, John G. Murray, two of the defendants most active in perpetrating the alleged frauds, and while the facts fully sustain each one of the three equities upon which the bill rests, some care is required in stating them so as to present the real issues which they determine.

STATEMENT OF THE FACTS.

CONSTITUTION AND STATUTES OF ALABAMA.

The Brierfield Coal and Iron Company was organized under the following statutes of the State of Alabama, which were then in force (Code of Alabama (1876), Part 2, Title 1, Chapter 1, Article 1):

SECTION 1803. *Declarations Filed with Probate Court: Contents.* Two or more persons desiring to form themselves into a private corporation for the purpose of carrying on any manufacturing, mining, immigration or industrial business in this State, may file with the Probate Court of the county in which it is proposed that such company shall have its only or principal place of business, a written declaration, signed by themselves, setting forth—

1. The names and residences of the petitioners.
2. The name of the proposed corporation; the place at which it proposes to have its principal or only place of business; the general purpose of the corporation, and the nature of the business it proposes to do.
3. The amount of the capital stock, and the number of shares into which it is to be divided.
4. Any other matters which it may be desirable to set forth in the organic law.

SEC. 1804. *Commission Issued to Board of Corporators. Books of Subscription: When and Where Opened.*—Upon the filing of the declaration, as above, the Probate Judge of the county shall issue to

the parties, or to any two or more of them, a commission constituting them a board of corporators, giving them authority to open books of subscription to the capital stock of the proposed company, requiring them to give such notice, as he may deem fit, of the names and places of the opening of the books of subscription.

SEC. 1805. *Subscriptions: How Payable.*—All subscriptions to the capital stock of any company organized, or proposed to be organized, under the provisions of this article shall be made payable in money, or in labor or property at its money value, to be named in the list of subscription, and in case of a failure to perform the labor, or deliver the property, according to the terms of the subscription, the money value thereof, as named in the lists of subscription, shall be paid by the subscribers.

SEC. 1806. *Company: When and How Organized.*—When not less than fifty per cent. of the proposed capital stock has been subscribed by *bona fide* subscribers, the board of corporators shall call the subscribers together, a majority of whom, in value, being present, either in person or by proxy, shall proceed to the organization of the company by the election of a board of directors, from among themselves, of not less than three nor more than nine members, to manage the affairs and business of the company for the ensuing twelve months, or until their successors are duly elected and qualified. The board of directors thus elected shall elect a president or executive officer from their own number, and they shall also elect such person as they may see fit as secretary, both to serve for such time and under such conditions as the company may determine in their by-laws.

SEC. 1807. *Certificate of Organization.*—Upon the completion of the organization of the company, and the payment to the treasurer of the company, or some other officer designated for that purpose, in cash at least twenty per cent. of the capital subscribed, the board of corporators shall, in writing and over their signatures, certify the same to the Probate Judge of the county, who shall issue to the company a certificate that they have been fully organized according to the laws of Alabama, under the name and for the purposes indicated in their written declaration, and that they are fully authorized to commence business under their charter.

SEC. 1808. *Corporators After Organization Transfer to Company.* Upon the issuance of the certificate of incorporation by the Probate Judge, the board of corporators shall turn over to the company the money, subscription lists, notes, obligations, or other papers, they may

have taken as corporators in the formation of the company, and henceforth all such money, lists, notes, obligations, or other papers, shall belong to and be the property of the company, and shall be as binding on the company as if taken and made by themselves.

SEC. 1809. *Record Kept by Probate Judge.*—The application, orders, returns and certificates relating to the organization of the company shall be recorded in a book kept by the Probate Judge for such purpose, and for all such certificates, orders, transcripts and records, the Probate Judge shall be entitled to such fees as are allowed by law in other cases for like services.

SEC. 1810. *General Powers.*—Among the powers of such bodies corporate shall be the following:

1. To have perpetual succession.
2. To sue and be sued by the corporate name.
3. To have a common seal, and to alter the same at pleasure.
4. To render the shares or interests of the stockholders transferable, and to prescribe the mode of making such transfers.
5. To exempt the private property of the members from liability for corporate debts, except for unpaid installments, and to prescribe the time and manner of paying installments for subscriptions of the capital stock of the company.
6. To make contracts, acquire and transfer property, both real and personal, possessing the same powers in such respects as individuals now enjoy.
7. To establish by-laws, and make all rules and regulations deemed expedient for the management of their affairs not inconsistent with the Constitution and laws of this State or the United States.

SEC. 1811. *How Capital Stock may be Increased.*—Any company organized under the provisions of this article may increase its capital stock to an amount not exceeding one million dollars by giving each stockholder the preference of taking the increase in proportion to the amount of the original stock he may own, by a vote of two-thirds of the stock in value, had at a meeting called for the purpose, by and in pursuance of a notice given for thirty days in some newspaper published in the county where the company has its principal place of business, or where no paper is published in the county, by notice posted up at the court house door for a like period, giving the time, place and purpose of the meeting of stockholders.

SEC. 1812. *May Borrow Money and Execute Mortgages.*—Any

company organized under the provisions of this article may borrow money for the purpose of carrying out the objects of its charter, and may make notes, bonds, or other evidences of debt, and by a vote of a majority of the stock, had at a meeting called for the purpose by advertisement, as provided above in the preceding section of this article, may secure the payment of said notes, bonds, or other evidences of debt, by mortgage or deed of trust on any or all of their property, both real and personal; but in no case shall the debts thus created and secured exceed two-thirds of the amount of the capital stock unless the capital stock is all paid, then such secured debt may be to the extent of the capital stock.

In addition to the foregoing provisions, this chapter of the Code of 1876 contains the following provisions, which are pertinent to this cause:

SECTION 2035. *Increase Void Unless for Value.*—Neither stocks nor bonds shall be issued by any private corporation, except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void.

Section 6, Article XIV., of the present Constitution of Alabama, in force in May, 1882, is as follows:

SECTION 6. No corporation shall issue stock or bonds except for money, or labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general laws, nor without the consent of the persons holding the larger amount in value of stock, first obtained at a meeting to be held after thirty days' notice given in pursuance of law.

Constitution of Alabama, 1875.

The first step taken for the organization of the Brierfield Coal & Iron Company under these statutes was an agreement in writing between T. J. Peter and C. C. Huckabee, dated February 26, 1882, whereby Huckabee agreed to sell to Peter certain lands in Bibb and adjacent counties for $45,620, and to accept in part payment the bonds and capital stock of a corporation to be organized by Peter, and to which the lands were to be conveyed. Record, p. 522. The details of this agreement were modified in some respects by a subsequent agreement in writing between these parties, dated April 24, 1882.

Record, p. 525.

Robert L. McCalley was interested in the lands which Huckabee agreed to convey, and it was verbally agreed between McCalley, Huckabee and Peter that McCalley's interest amounted to $5,000 of the purchase price which Peter was to pay for the land.

Testimony of McCalley, record, p. 462.

Pursuant to the agreements, written and verbal, above mentioned, Huckabee, Peter and McCalley filed in the Probate Court of Bibb county, Alabama, on 27th of April, 1882, a declaration in writing, signed by themselves, as required by § 1803 of the Code of Alabama. A commission was issued to them as a board of corporators, as required by § 1804, giving them authority to open books of subscription to the capital stock of the proposed company; and these three persons, as a board of corporators, gave notice that books of subscription to the capital stock of the Brierfield Coal & Iron Company would be opened at Brierfield on May 4, 1882.

Record, pp. 550 *et seq.*

The declaration in writing fixed the capital stock at $750,000. The statute above quoted (§ 1806) required that not less than fifty per cent. of this proposed capital stock should be subscribed by *bona fide* subscribers, and § 1807 required, as a further preliminary to obtaining a certificate of incorporation, that twenty per cent. of the capital subscribed should be paid in cash, to the Treasurer or some other officer designated to receive the payment.

The board of corporators met on the day designated in the notice, viz: May 4, 1882, and opened books of subscription, and, on the same day, certified to the Judge of Probate, who issued the commission, that fifty per cent. of the capital stock had been subscribed by *bona fide* subscribers, and that twenty per cent. of the capital subscribed had been paid to the President of the company in cash.

Record, p. 554.

The subscribers to the stock, called together by the board of corporators on the same day, fixed the number of directors at five, and Huckabee, Peter, McCalley, and Amos R. Southwick and John G. Murray were elected directors (record, p. 557), and in the evening of the same day the directors met and elected Peter President and Murray Secretary and Auditor of the company. Record, p. 558. Amos A. Southwick was elected Vice-President at this meeting, but he does not appear to have been a stockholder then, or at any subsequent period.

The subscriptions to the capital stock of the corporation received by the board of corporators and returned by them to the Judge of Probate of Bibb County was as follows:

> "In accordance with the order of John S. Gardner, Esq., Judge of Probate of Bibb County, in the State of Alabama, to the undersigned 'as a Board of Corporators' of the 'Brierfield Coal & Iron Company,' the undersigned gave the notice of the times and places of opening the books of subscription to the capital stock of the said company, and on May 4, 1882, at the village of Brierfield, opened books of subscription to the capital stock of said company as follows, and received the following *bona fide* subscriptions:"

'The undersigned respectively subscribe the amounts set opposite their names to the capital stock of the Brierfield Coal & Iron Company, on the terms to be provided by the Board of Directors:

T. J. Peter, one hundred and twenty thousand dollars.
E. A. Peter, fifty thousand dollars.
C. S. Plumb, fifty thousand dollars.
Plumb & Hood, fifty thousand dollars.
Samuel Thomas and associates, seventy-five thousand dollars.
Justin S. Morrill, ten thousand dollars.
C. C. Huckabee, fifteen thousand dollars.
R. L. McCalley, five thousand dollars.'"

Record, p. 554: also testimony of T. J. Peter, record, pp. 165–6.

These subscriptions amount in the aggregate to $375,000, being just fifty per cent. of the proposed capital stock. T. J. Peter testifies:

> "I made all the subscriptions there except Mr. Huckabee's and Mr. McCalley's, who made for themselves, I being authorized to make the subscriptions at the time."

Record, p. 165–6.

E. A. Peter was the wife of T. J. Peter, C. S. Plumb was the wife of Preston B. Plumb, afterward made trustee in the mortgage; Plumb & Hood were said Preston B. Plumb and —— Hood, his partner; Samuel Thomas and associates were Samuel Thomas, George I. Seney and Calvin S. Brice; these people had severally authorized Peter to subscribe their names to the stock subscription required to organize the corporation, for the amounts stated opposite their names respect-

ively, and these amounts, together with the $15,000 subscribed by Huckabee and $5,000 subscribed by McCalley, amount to fifty per cent. of the proposed capital stock.

Twenty per cent. of this subscribed capital amounts to $75,000, and the board of corporators certified to the Judge of Probate of Bibb County that this sum had been paid in cash to T. J. Peter, President of the corporation, on May 4, 1882; Peter being one of the board of corporators that made the certificate. But it nowhere appears what became of the $75,000 which Peter, Huckabee and McCalley certify was paid to Peter, as President; Peter does not charge himself with it, nor are the payments credited to the several stockholders on the books of the corporation.

See accounts of Peter and other stockholders with the corporation, record, pp. 598 to 602.

And it nowhere appears that any effort whatever was made to collect the residue of $300,000 *of this subscription. This certificate of the board of corporators that* $75,000 *had been paid on this subscription to Peter, as President, is the last and only reference to this subscription in the corporate records.*

After this first subscription had been made, and when the subscribers were called together by the board of corporators May 4, 1882, to organize the corporation, and when by virtue of this subscription to its capital stock a board of directors had been elected, Huckabee being in the chair and McCalley acting as Secretary, Peter took the first step in a very shallow scheme to guard himself, and his wife, and other friends, who had authorized him to subscribe their names to the subscription for capital stock from possible loss if the corporation failed to be profitable and became involved in debt. This was to be accomplished by giving to himself, his wife, and other friends, a first mortgage on all the property of the corporation, both present and future, for all money invested in the enterprise; as well as certificates for so much paid-up capital stock. The capital stock secured to himself and friends the control of the corporation, and the right to any profits that might be realized, and the first mortgage was to protect the investment against the general creditors of the corporation, in the event the enterprise proved unprofitable and became involved.

Here is this first step:

"On motion of T. J. Peter the following resolution was adopted:

Resolved, That the directors be required to receive subscriptions

to the capital stock of the Brierfield Coal and Iron Company as follows: For the purpose of raising the sum of four hundred and fifty thousand dollars with which to purchase certain coal and iron properties, to open and operate coal and iron-ore mines, to repair rolling mills, to erect coke ovens and blast furnace, to produce coal and manufacture coke and iron, to build about five miles of R. R. tracks to connect the coal mines, coke ovens, and iron-ore banks with the blast furnace and rolling mill, it is ordered that the directors be authorized to receive subscriptions to the capital stock of said company, and for each nine hundred dollars paid to said company to deliver to the subscriber one thousand dollars in a six per cent. mortgage thirty-year bond, to be made on the property of said company, and a like sum of one thousand collars of the capital stock of said company."

Record, p. 557.

The second step in this scheme was taken at the meeting of the directors held the evening of the same day, May 4, 1882, when—

> "It was moved and seconded that the President be authorized to receive subscriptions to the capital stock of the company upon the terms and conditions directed by the stockholders at meeting heretofore."
>
> Record, p. 558.

Pursuant to this authority, Peter opened a new subscription, as follows:

> "In accordance with the resolution adopted by the stockholders of the Brierfield Coal & Iron Company, held at Brierfield on May 4, 1882, and the directions of the directors, held at the same place on the evening of the same day, I, T. J. Peter, President of said company, do now receive subscriptions to the capital stock of said company upon the following terms, as required so to do, both by the stockholders and directors:
>
> For the purpose of raising the sum of four hundred and fifty thousand dollars, with which to purchase certain coal and iron properties, to open and operate coal and iron-ore mines, to repair rolling mill, to erect coke ovens and blast furnace, to produce coal and manufacture coke and iron, to build about five miles of railroad tracks to connect the coal mines, coke ovens and iron-ore banks with the blast furnace and rolling mill:
>
> Now, therefore, the undersigned agree to pay to said company the amounts respectively set opposite our names, in such

sums and at such times as the directors of said company may require, and to receive from said company, for each nine hundred dollars paid in, the sum of one thousand dollars, in a six per cent. mortgage bond of said company, and nine hundred dollars in the capital stock of said company.

Not more than — per centum of each subscription to be called for during one month.

T. J. Peter and associates, one hundred and twenty thousand dollars.

E. A. Peter, fifty thousand dollars.

R. L. McCalley, five thousand dollars.

C. C. Huckabee, fifteen thousand dollars.

G. I. Seney and associates, seventy-five thousand dollars.

L. S. Plumb, fifty thousand dollars.

Plumb & Hood, fifty thousand dollars.

Justin S. Morrill, ten thousand dollars."

Record, pp. 558, 559.

The name L. S. Plumb is a manifest clerical error and should be C. S. Plumb, as G. I. Seney and associates are the same persons as Samuel Thomas and associates.

In reference to when this second agreement was signed the evidence of Mr. Peter is as follows:

"Q. The other subscription on page 23 you afterwards prepared yourself, and it was signed by the parties?

A. Except Mrs. Peter, whose name I signed.

Q. That was subsequent to the organization of the company.

A. Yes, sir; although made as of the same date, both of May 4th.

Q. The second subscription list was made after the company had been organized?

A. Yes, sir."

Record, p. 166.

Again, on pages 242, 243 of the record, he says:

"Q. Can you tell by looking at that book—the subscription book—what the date of that agreement was in regard to the stock and bonds?

A. The date is there. Here is the resolution of subscription; no date to it. Here is the second subscription. I can't

tell. It was done in a short time—about the same time these other things were done. At first these gentlemen had authorized me to sign their names, but afterwards, for the sake of better protection, I thought it better to have them sign it again. I went East about this time, and then had them to make their subscriptions over again.

Q. That was after May 4th?

A. I think it was.

Q. What was the date of the certificate of the Judge of Probate?

A. May 5th. It was, then, after May 5, 1882.

Q. It was after the company had been organized?

A. Yes, sir; I think it was. I think so from the manner in which it comes in here.

Q. Didn't you go East after the company was organized?

A. Yes, sir; I think it was subsequent to the 4th day of May, 1882. I think I went directly East and got the subscriptions."

Deposition of Peter, record, pp. 242, 243.

It is important to bear in mind this second subscription agreement, by the terms of which the subscribers were to receive both stock and bonds for the same money paid in; for it was by this second agreement that the subsequent relations between the corporation and its stockholders was determined. It nowhere appears that this second subscription was intended to represent the same liability as that incurred by the first subscription, which was certified to the Judge of Probate of Bibb County by the board of corporators. This second subscription is signed by the same parties and for the same amounts as the first subscription; but, if it was intended to represent the same liability, and did in fact represent it, the mortgage bonds which the subscribers were to receive were left wholly without any consideration whatever. The first subscription bound the subscribers severally to pay the amount subscribed in consideration of stock only, and if the second subscription, by the terms of which the subscribers were to receive not only stock, but also bonds, on payment of their subscriptions, these bonds are necessarily a mere gratuity to be given on the discharge of an obligation already incurred.

This, however, was doubtless what was intended, for the payments made by the stockholders prior to May 4, 1882, and went to make up

the twenty per cent. paid to President Peter, as certified to the Probate Judge of Bibb County, *were credited to the subscribers severally against the liability assumed by this second subscription; and these payments made before the second subscription list was authorized, prepared or signed, were credited to the subscribers as payments made under it, and in respect to which they were entitled to both stock and bonds as provided in this second agreement.*

See account of Justin S. Morrill and other stockholders with the corporation, record, pp. 598 to 602.

Huckabee, on May 8, 1882, four days after the corporation was organized, conveyed to the corporation the property specified in the agreement between Peter and himself.

See this deed, record, p. 526.

The consideration expressed is $45,000, of which sum $25,000 had been or was subsequently paid to Huckabee in cash, and the remainder ($20,000) went to pay Huckabee's subscription to the capital stock for $15,000 and McCalley's subscription for $5,000. By reference to the accounts of Huckabee and McCalley, above mentioned, as well as to the testimony of Huckabee, Peter and Murray, it will be seen that these payments were regarded and treated as made on the liability incurred by the record subscription, and bonds were issued to Huckabee accordingly.

On the same day that Huckabee executed the conveyance (May 8, 1882,) Peter, as President, executed and delivered to him a receipt for $15,000, and also to McCalley a receipt for $5,000, in full payment of their subscriptions to the capital stock of the corporation.

See receipt to Huckabee, record, p. 526.

See receipt to McCalley, record, p. 526.

But there were some questions in regard to the title to the property conveyed to the corporation by Huckabee, and Huckabee and McCalley agreed to leave in the hands of the company

> "The *bonds and stock* of said company which the undersigned (Huckabee and McCalley) would obtain by reason of the payment of their subscription to the capital stock of said company."

See this agreement, record, p. 528.

It is thus demonstrated that it was agreed amongst the stockhold-

ers before they went into the enterprise, that each should receive both stock and bonds for the money paid in; for these receipts by Peter to Huckabee and McCalley, and this agreement by them to leave their "*bonds and stock*" in the hands of the company, were executed before Peter could have gone "East" and obtained the signatures to the second subscription. It had doubtless been signed by T. J. Peter and associates, E. A. Peter, (whose name was signed) by T. J. Peter,' and by McCalley and Huckabee, but not by the others who lived "East."

The obvious purpose of abandoning the first stock subscription certified to the Probate Judge of Bibb County, whereby the subscribers agreed to pay the amounts severally subscribed for stock in the corporation, and the substitution of the second subscription whereby the subscribers were to receive both stock and bonds for the same money paid in was to give effect to the understanding between Peter and the others who agreed to go into the enterprise with him, that as stockholders they would control the corporation and reap any profits that might be realized, and as bondholders they would have a first lien on the property and assets of the corporation, which, in the event of loss, would protect the investment in capital stock against the general conditions of the corporation. This was the necessary and obvious effect of the arrangement, and it could have had no other purpose.

The next step in giving effect to this purpose was the execution of the mortgage to Plumb, as trustee, and the issuance of the bonds thereby secured.

FIRST MORTGAGE.

The proceedings of the directors and stockholders authorizing the execution of the first mortgage to Preston B. Plumb, as trustee, as shown by the records of the company, are as follows:

> "At a meeting of the Board of Directors held September 1, 1882, on motion of C. C. Huckabee, the President of the company was authorized to publish the following notice:
>
> 'Notice is hereby given, in conformity with the provisions of the statute in such cases made and provided, that there will be a meeting of the stockholders of the Brierfield Coal and Iron Company, held at the office of said company in the town of Brierfield, county of Bibb, State of Alabama, at 9 o'clock A. M., on Friday, August 25th, 1882, to consider the propriety of

placing mortgage upon the property of said company and the issuance of bonds thereunder.'

The board then adjourned to meet at the call of the President.

JOHN G. MURRAY,
Secretary."

"This is to certify that the above advertisement has been published in the Bibb Blade four successive weeks, beginning August 3d, 1882, and ending August 24th, 1882.

J. M. LANGSTON & CO.,
Per S. H. GIST."

"BRIERFIELD, ALA., August 25th, 1882.

In accordance with published notice, a meeting of the stockholders of Brierfield Coal and Iron Company of Alabama was held at the office of the company, in the town of Brierfield. The meeting was adjourned until Friday, at 9 o'clock A. M., September 1st, 1882.

T. J. PETER, President.
JOHN G. MURRAY, Secretary."

"BRIERFIELD, ALA., September 1st, 1882.

The adjourned meeting of the stockholders of the Brierfield Coal and Iron Company was held at the office of the company in the town of Brierfield. A mortgage to Preston B. Plumb, trustee, was read, considered and approved, and the directors of the company authorized to execute the same, by unanimous vote of the stockholders of said company."

Record pp. 559, 560.

This original mortgage deed of trust conveys to Plumb, as trustee for the holders of bonds to be issued under it

"All of the real and personal property now owned by said company situated in the State of Alabama, and all of the real and personal property that may hereafter be acquired and owned by said company wherever the same may be situate, together with all the franchises, tolls, incomes, rents, issues and profits of said company, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and

to the same and any and every part thereof, with the appurtenances thereto belonging."

Record, p. 11.

And contains a stipulation for "all such further deeds, conveyances and assurances in law" as the trustee may deem necessary.

Record, p. 14.

And, under this deed, six per cent. thirty year gold bonds to the amount of $500,000 were issued by the corporation and were delivered to the subscribers to the second subscription list as they severally made payments of the amounts subscribed. This is shown, not only by the accounts between the several subscribers and the corporation, above mentioned (record, pp. 598 to 602), but also by the testimony of Peter and Murray. Peter testifies as follows:

"Q. Were stock and bonds issued to the several subscribers, and their issuance according to the second subscription paper?

A. Yes, sir; as they paid their money in.

Q. Have any certificates of stock been issued to the parties who have not paid in their full subscriptions?

A. Yes, sir."

Record, p. 166.

In answer to the question as to when calls were made, he says:

"A. No; the records of the company only show when the calls were made, after they had paid and received their bonds. You understand, the theory was that they were to receive bonds and stock as they made payment—as they made payment up to the sum of four hundred and fifty thousand dollars, and twenty per cent. in addition—they received stock and bonds. It was then found that there was not money enough to carry out our plans, and an additional amount was called for by the Board of Directors on the stock, and the records show these additional amounts that were called for.

Q. Then, in the original organization, it was contemplated that stockholders should receive bonds and stock on the subscription that was made?

A. That was the expectation of the subscribers to the stock.

Q. What was that expectation?

A. That they would receive bonds and stock—in other words—that, for every thousand dollars paid in, they were to receive a thousand dollars in bonds and nine hundred dollars in stock.

Q. Please look at the records shown you on page 26, at the bottom. Is that the first assessment that was ever levied on the stock?

A. It was the first assessment that was ever levied over and above the ninety per cent.

Q. For the ninety per cent. of which you speak, bonds were issued, were they not?

A. Bonds and stock were issued for it at the same time.

Q. For the ninety per cent. paid in, then, and the twenty per cent. paid in, bonds and stocks were both issued?

A. Yes.

Q. Was the ninety per cent. paid in prior to the issue of the bonds?

A. A good deal of it was, and money was paid in before any bonds or stock was issued to the stockholders, and after the bonds were issued, bonds and stock were issued to the stockholders for the amount of money paid in; and as they made payments afterwards bonds and stock were issued in proportion to their payments.

Q. These issues of stock and bonds were in the proportion that you have stated—nine hundred dollars of stock and one thousand dollars of bonds for each one thousand dollars paid in?

A. Yes, sir.

Q. Do the books of the company show how much money had been paid in by the subscribers before the issue of the bonds?

A. Yes, sir; I think they will.

Q. At the time the bonds were issued, or authorized to be issued, the bondholders and stockholders were the same persons, were they not?

A. Yes, sir.

Q. And the bonds authorized to be issued were issued to the subscribers to the stock in the manner that you have stated?

A. Were issued to the subscribers in the manner that I have stated; yes, sir."

Record, pp. 182, 183, 184.

John G. Murray, the Secretary of the company, in his deposition taken in the cause of P. B. Plumb, Trustee, vs. Brierfield Coal & Iron Company, and introduced by consent in this cause, makes the transaction perfectly plain. I quote from the record, pages 422, 423:

"When stock and bonds were first issued, there were issued for every nine hundred dollars paid, one first-mortgage bond and ten shares of the capital stock of the Brierfield Coal & Iron Company. No shares of stock were issued to Huckabee. No bonds were issued to McCalley, and no stock. I said he had paid five thousand dollars in to the company. The five thousand dollars due McCalley was considered cash also paid to Huckabee, and has never been paid to Huckabee, except fifteen thousand dollars, less expenses and the credit to McCalley. I have made a complete statement of everything that has been paid upon bonds and stock. When bonds and stock were originally issued, there were issued for every nine hundred dollars received in cash, one first-mortgage bond and ten shares of capital stock of the company. There was afterwards paid on calls of the company, at different times, about fifty-seven per cent. upon the stock issued in the manner as stated heretofore, and the exact amount paid by each stockholder I have already given. The following is a copy of the first stock issued:

No. 1. Brierfield Coal & Iron Company. Shares $100 each. Capital, $750,000. This certifies that Esther A. Peter is the owner of one hundred and fifty full-paid shares, of $100 each, in the capital stock of the Brierfield Coal & Iron Company of Alabama, transferable only on the books of the corporation, in person or by attorney, in accordance with the by-laws of said corporation, and on surrender of this certificate. In witness whereof, the seal

of the corporation and the signatures of the President and Secretary are hereunto affixed.

Brierfield, Ala., October 9, 1882.

(Signed) T. J. PETER, President.

[Seal.]

Attest: JOHN G. MURRAY, Secretary.

A certificate similar to this for ten shares was issued to each subscriber upon payment of nine hundred dollars, and as given one bond. Some of the original certificates are outstanding. The new certificates are in the same form as the old ones. Every stockholder recognized the fact that when the call was made he owed the money upon the stock issued, by paying the assessment as the company made the call. There has been no written agreement of subscriptions other than the first one. The amounts paid by subscribers amount to ninety per cent. on the bonds. The additional amounts, as testified to by me, as heretofore, was paid upon stock upon the books of the company."

I have quoted at length from the testimony of these two witnesses, which is uncontradicted, to show the original agreement between the stockholders, and the manner it was carried out. All of the bonds, with the exception of *seven*, were issued under this agreement, and the whole of the stock issued was issued under it.

Murray further testifies:

"Four hundred and ninety-three (493) bonds of one thousand dollars each were issued under the mortgage" (Record, p. 407), and then states in detail to whom they were issued, as follows:

T. J. Peter, trustee for E. T. Peter	5
T. J. Peter, trustee for J. F. Peter	5
T. J. Peter, trustee for G. F. Peter	5
T. J. Peter, trustee for Blanche Peter	5
Mrs. C. S. Plumb	99
Justin S. Morrill	11
A. O. Beebe, for Thomas, Brice & Seney	83
John G. Murray	1
E. A. Peter	50
J. T. Peter	216
	493

"There were seven bonds not originally issued that were used as collateral security for a loan of five thousand dollars, made from the Commercial Bank of Selma, endorsed by John G. Murray and Thomas J. Peter. * * * T. J. Peter, President of the Brierfield Coal & Iron Company, borrowed money from the Commercial Bank of Selma. He and myself became securities on the paper for the company. It has been paid to the bank by John G. Murray, one of the endorser's thereon."

Murray's testimony, record, p. 410.

It does not appear from Murray's testimony nor from the books of the corporation when the bonds were delivered to the several subscribers for stock. The amounts (Record, pp. 598 to 602) show that they were charged with them June 30, 1884, and Murray testifies in regard to the issuance of the last of them as follows:

"Q. You stated that three hundred and seventy-five thousand dollars' worth of stock was subscribed for. Will you please tell me how it is that on the issue of this certificate for 2859 shares to Mr. Peter, as trustee, the outstanding stock then amounted to 5123 shares?

A. Yes, sir. According to the original terms of the subscription, as I have testified, when a subscriber to the capital stock paid nine hundred dollars he received a bond of the Brierfield Coal & Iron Company for one thousand dollars and ten shares of the capital stock of the Brierfield Coal & Iron Company. When the three hundred and seventy-five thousand dollars had been paid in, less the ten per cent. discount which was allowed on the bonds, they having been sold at ninety per cent. of their par value, it was found by the company that they needed more money. They had in their treasury the remaining one hundred and twenty-five bonds. These bonds *were bought by Mr. and Mrs. Peter, and upon the delivery to them of these bonds there were delivered to them in exactly the same way as they had been delivered to other persons buying bonds, ten shares of the capital stock for each nine hundred dollars paid in; so this stock was issued without ever having been subscribed for or without any authority from the Board of Directors of the company.* I bought one of the bonds myself; paid nine hundred dollars and received with it ten shares of the stock in the Brierfield Coal &

Iron Company. Though never having been a subscriber to the capital stock, I received it on the same basis as it had been given to those subscribing to it."

Record, p. 224.

The stock certificate issued to Peter, No. 30, and to Murray, No. 31, show that this transaction occurred Nov. 23, 1883, or before that date.

Various transfers of the bonds were made by some of the holders to others, and some of them were deposited as collateral security with banks for loans of money; but before the hearing in this cause all of the bonds had gotten back into the hands of the original parties except the thirteen issued to Huckabee, which were transferred by Huckabee to James T. Fitzgerald, and nine held by Mrs. M. S. Pomeroy. Testimony of Murray, Record pp. 511 and 512. This testimony shows that some of the bonds were then held as collateral by the City National Bank of Selma, the Alabama National Bank, J. T. Fitzgerald, and the Commercial Bank of Selma, but these were taken up by Peter or Murray before the hearing.

Record pp. 538, 539, 545.

All of these bonds except the seven hypothecated with the Commercial Bank of Selma, and afterwards taken up from that bank by Murray, were issued and delivered to the subscribers to the second subscription list in accordance with the terms therein stated, and for all the money paid in certificates of stock fully paid were likewise issued to the subscribers making the payments. The first certificate was issued October 9th, 1882, and is copied in the testimony of Murray above quoted; copies of all the other certificates are included in the Record, manuscript pages 1127, *et seq;* printed pages 594, *et seq.*

It is manifest therefore as matter of fact that there was absolutely no consideration whatsoever for the issuance of the bonds. These subscribers had each severally become bound by the stock subscription certified to the Probate Judge of Bibb County to pay the amount subscribed for stock in the corporation, and this contract, about the legality and validity of which there can be no question, was fully performed on both sides when the money was paid and the stock issued.

That this was the legal status between this corporation and the subscribers to its stock when the latter had completed payment of

their several subscriptions, is established as matter of fact by the uncontradicted evidence in the case beyond all controversy. A valid subscription had been made to the capital stock of the corporation, and certificates for fully paid stock had been issued to the subscribers for all payments made, and the contract was thus fully performed on both sides.

It may be true that Peter and the others concerned believed that the subscription list certified to the Judge of Probate of Bibb County was a matter of form, involving no real liability; and that the second subscription by the terms of which the subscribers were to receive both stock and bonds for the same money paid in, was not directly in violation of both the Constitution and Statutes of Alabama; and that the payments were made in fact on account of this second and void subscription.

Thomas, Seney and Brice all swear positively that they regarded their stock as fully paid.

Record pp. 398, 399.

In other words, they may have believed that they had secured the money invested in the enterprise to the extent of $500,000, to themselves by a mortgage valid against the general creditors of the corporation.

But the invalidity of the arrangement, so Peter testifies, became known to him just prior to June, 1884, when he needed more money for the corporation. In June, 1883, the corporation had purchased the property of the Bibb Furnace Company for $90,000 (Record p. 546) and had made other large expenditures; and the Board of Directors, consisting of Peter, Murray and Huckabee undertook to make assessments on the stock.

Peter testifies:

> "Q. When did you first learn that the original plan under which this organization was supposed to be conducted was invalid?
>
> A. Prior to the resolution which levied the thirty per cent. assessment. The assessment prior to that had been paid in coupons by the consent of all the bondholders. I had learned from —— source just prior to June, 1886, that the stock was liable to be assessed in full—that it would have to be paid in full under the Alabama statutes.

Q. That was early in June, 1886?
A. Just prior to that."
Record, p. 240.

This resolution was adopted January 1, 1886. Record, p. 191.

On cross-examination, Mr. Peter makes the knowledge and the time when the stockholders received it clear. I quote from the Record, page 240:

"Q. Prior to the time when the thirty per cent. assessment was made, had it ever been called to the notice of the stockholders, or directors, that their original plan of subscription was invalid?

A. No, sir.

Q. You were President of the company at that time?

A. Yes, sir.

Q. Did you know that the plan of subscription was not authorized by the laws of Alabama?

A. Not until shortly before thirty per cent. assessment was levied.

Q. Do you know whether any other stockholders or directors knew that it was unauthorized?

A. I know they did not.

(London moved to exclude the answer on the ground that the parties are charged with a knowledge of the law.)

Q. After the stockholders became informed that this plan of subscription was unauthorized by the laws of Alabama, that thirty per cent. call was made?

A. Yes, sir.

Q. The stockholders were not informed until that time?

A. No sir; they had not. I had been informed, and I had the directors pass this resolution, and explained the matter to them.

Q. After the assessment of thirty per cent. was made, you explained to the stockholders the law of Alabama on this mode of subscription?

A. Yes, sir; and told them that they would have to pay it."

There is an apparent discrepancy between these statements by Mr. Peter and the testimony of Mr. Murray, the Secretary. The latter testifies: "In January, 1887, this matter of stock assessment was settled." Record, page 224. Though he states elsewhere that he did not know of the illegality of the subscription until July, 1887. Record, page 232. He testifies that he never knew anything about the invalidity of the subscription until July, 1887, and at the same time testifies that the Directors, of which he was one, treated the stock as unpaid as early as July, 1884. His testimony on this subject, on cross examination, is as follows (Record, pp. 228, 229):

> Q. At the time that resolution was adopted authorizing the issue of ten shares of stock, with one bond, for ninety per cent. of the par value of the bond, the Directors and stockholders all supposed that to be a valid agreement?
>
> (Objection by London, on the ground that what they supposed is not evidence, and that it is hearsay.)
>
> A. That is not in the form of a resolution. It is the face of the stock subscription. All thought it was all right and subscribed for it. Their signatures are there.
>
> (London moves to exclude the answer of the witness.)
>
> Q. When was it found that it was an invalid subscription?
>
> A. I never knew anything about it, so far as I am concerned, until July, 1887.
>
> Q. When did they begin assessing the stock?
>
> A. Can tell by looking at the record. I think July, 1884.
>
> Q. That was when they first began to assess?
>
> A. Yes, sir.
>
> Q. In July, 1884, it was treated by the Directors and stockholders as unpaid stock?
>
> A. Yes, sir.
>
> Q. Assessments were made on it from time to time?
>
> A. Yes, sir.

There is really no conflict as to the statement of Mr. Peter, that it was known as early as January 1, 1886, that the subscribers were liable on their stock subscriptions.

ASSESSMENTS OF STOCK.

The records of the company show that an assessment of twenty

per cent. on the stock was made as early as July 9, 1884; seven per cent. April 20, 1885, and thirty per cent. January 1, 1886.

Resolution, Record, pp. 190, 191, 192.

In this connection, Mr. Peter was asked:

"Q. Was the fifty-seven per cent. assessment, of which you have spoken, all the assessments that were levied on the stock?

A. By the action of the Board of Directors?

Q. By the company?

A. Yes, sir.

Q. There was never any call made for any part of the stock after January 1, 1886?

A. Nothing by the Board of Directors. Individually I demanded of those who had not paid, and they said they were unable to pay.

Q. The Board of Directors made no other call?

A. No, the Board of Directors made no other call."

Record, p. 184.

STOCK ACCOUNTS.

There was no separate account for stock subscriptions, the entries in all cases being a charge of bonds.

Mr. Murray, the Secretary, testifies that the only means of ascertaining the state of the account of any stockholder was by taking the stock certificate book as a debit and deducting therefrom the amount of credits placed to the account of each stockholder.

I quote from the Record, pages 232 and 233, where he explains how the accounts were kept:

"Q. Are the amounts credited to the stockholders in addition to the amounts they paid for their bonds?

A. Yes, sir.

(London moved to exclude that answer, and objected to the question on the ground of irrelevancy and illegality.)

A. The stock is not charged in the account where the credit is given. The stock certificate book is a part of the accounts. That is a charge against them for that stock.

Q. You kept stock account on the debit side by that stock-certificate book?

A. Yes, sir; there never was any other debit account of stock, because the stock having received credit, the accounts to

which the money went were charged, and the balance kept in the books.

Q. The stock-certificate book is a part of the account of the stockholder?

A. It shows every certificate of stock issued.

Q. Does the stock-certificate book show the amount due by the several stockholders?

A. No, sir; I don't think it does.

Q. Where is the place in the books that does?

A. It is the difference between the two—difference between the credits and the subscription.

Q. Does it show the amount of the debit?

A. It shows the stock issued to them.

Q. Does it show the amount they owed for stock?

A. I don't think it does.

Q. You have stated a number of times that the stock-certificate book is a part of the books of the Company in ascertaining the accounts of the stockholders?

A. Yes, sir.

Q. Does that stock-certificate book show the amount that would be due by the stockholders, less the credits on the ledger?

A. Yes, sir; I think it does.

Q. When I speak of debits, I don't mean the balance; I mean the original charge. So, in ascertaining the amount due by the stockholders, you took the stock certificate book, and deducted the credits to the stock account, and the balance the stockholders owed? If the stock-book shows a hundred shares of stock issued to a stockholder, he is subject to a charge on his account here— in addition to the bonds here—of ten thousand dollars?

A. Yes, sir."

Again, on page 215, he testifies as follows:

"Q. Please turn to the stock account in the general ledger. What amount is charged to the stock account in the general ledger?

A. $542,115.17 is charged to the account of stock and bonds.

Q. Isn't there $494,000 of that, that is first-mortgage bonds?

A. Yes, sir.

Q. Then, how much of the stock entries in all—how much is charged to stock independent of bonds?

A. Independent of bonds, and the bills payable to E. A. Peter, there is nothing charged to stock.

Q. Nothing charged to stock?

A. No, sir."

There has been an entry on the journal of the Company, making stock debtor to first mortgage bonds $494,000, which was afterwards corrected. Mr. Murray is examined as to these entries, and testifies:

"Q. Look at this book — what book is it?

A. The journal of the Brierfield Coal & Iron Company.

Q. Whose handwriting are those entries in?

A. My own handwriting.

Q. I wish you would read on page 105 the last in there, to stock dated June 30, 1884?

A. Stock, to first-mortgage bonds debtor, $494,000; T. J. Peter, $280,000; E. S. Plumb, $99,000; Samuel Thomas, $83,000; Justin S. Morrill, $11,000; C. C. Huckabee, $15,000; R. L. McCalley, $5,000; John G. Murray, $1,000. Money paid for bonds having been credited to stock, and should have been credited to bonds, as no consideration has been received by the Brierfield Coal & Iron Company for the stock issued.

Q. That entry was true at the time it was made?

A. Yes, sir."

Record, p. 212.

S. Roman, an expert, examined for the complainants, on cross-examination, testifies:

"Q. You have read all that the stock-certificate book shows, and it is the only book you have thoroughly looked over?

A. Yes, sir.

Q. That book is necessarily connected with the other books, is it not?

A. It ought to be, from what I understand from Mr. Murray.

Q. I asked you if that book is not necessarily connected with other books?

A. It ought to be.

Q. Is it?

A. Not here, with the regular books.

Q. I don't understand?

A. No entries of the stock-books in any of the books produced here.

Q. Have you examined them all?

A. Yes, sir.

Q. Thought you said there were some you had not examined?

A. They would have no reference to it.

Q. You say, then, there are no entries in any of the books relating to the stock-certificate book?

A. No, sir; not to my knowledge.

Q. How about these notes?

A. As I answered in the direct examination, they have no direct connection at all.

Q. Money received for the stock has no direct connection?

A. For the books of the company do not show to whom the stock was issued, or the stock account does not show to whom the stock was issued. The stock account of the ledger does not give the names and amounts, or anything else, of the stock delivered to any party.

Q. Does any book throw any light on that book at all?

A. On the different certificates contained in that book?

Q. Do they not throw any light at all?

A. No, sir."

Record, p. 211.

Thomas J. Peter was the guiding spirit of the enterprise; he was elected president on the organization of the corporation and continued such until its close. John G. Murray was its secretary, and these two together with Huckabee, who appears to have been a mere cipher in the concern, constituted the quorum of the Board of Directors at the several meetings when assessments were levied on the stock.

Record, pp. 190, 191, 192.

When the alleged discovery was made by Peter that the original plan was invalid, no action whatever was taken by the corporation. The lien claimed to have been obtained on all the property, assets and

franchises of the corporation by the mortgage bonds to protect the capital invested by the stockholders in the enterprise against the general creditors of the corporation, was still asserted while the corporation proceeded to obtain credit from everybody that would trust it, including appellants and others to the amount of over $200,000. See schedule of indebtedness furnished by Murray, treasurer, exhibit A, to his testimony.

Record, p 197, *et seq.*

Peter, Murray and Huckabee, constituting a majority of the Board of Directors, levied three assessments on the stock, but we have seen that no proper accounts were kept of these assessments; and the payments made in respect to them consisted in large part of the surrender of coupons from the bonds issued to the stockholders

It is impossible to determine with accuracy from the books and the testimony of Peter, the president, and Murray, the secretary, what sums were actually paid in cash by the stockholders under these assessments. For not only were the coupons on bonds credited against the assessments, but the original payments were credited in the same way.

MURRAY TESTIFIES.

"A. The amount paid by George I. Seney was $22,800, and of that amount $7,200 was coupons; Mrs. E. A. Peter, $50,000, paid in cash; Justin S. Morrill, $6,270, $990 of which was paid in coupons; R. L. McCalley, $5,000, which was paid in cash. It was credited to him as a cash payment. It is explained in this testimony here (referring to his depositions in the case of W. L. Chambers, trustee, against the Brierfield Coal & Iron Company). C. C. Huckabee, $2,166, all of which was paid in coupons. John G. Murray paid for stock $600, $240 of which was paid in coupons. T. J. Peter, $83,640.85, $35,880 of which was paid in coupons. Mrs. C. S. Plumb paid $43,089.78, $7,260 of which was paid in coupons. Samuel Thomas paid $23,745, $9,600 of which was paid in coupons. C. S. Brice paid $810, $540 of which was paid in coupons."

Record p. 153.

AMOUNT OF COUPONS CREDITED TO STOCK SUBSCRIPTIONS.

For convenience, I insert Mr. Murray's statement, showing in

detail the amount of interest coupons included in these credits, which will be found on pages 151 and 152 of the Record:

"Q. Please give the names of the persons and the amounts paid or credited on subscription account of interest coupons, and also name the amount each stockholder to whom interest coupons were paid in cash.

A. I will first state the amount of interest coupons credited to stock subscriptions on account of interest on first-mortgage bonds:

Justin S. Morrill	$ 990 00
C. C. Huckabee	2,166 00
George I. Seney	7,200 00
T. J. Peter	35,880 00
Mrs. C. S. Plumb	7,260 00
John G. Murray	240 00
Samuel Thomas	9,600 00
C. S. Brice	540 00
	$63,876 00"

AMOUNT OF DISCOUNT AND INTEREST CREDITED TO SUBSCRIPTIONS.

In addition to this amount credited, the accounts of the several subscribers show that the following sums were credited to their accounts as discount on the bonds issued to them, respectively, and as interest on the amounts paid in by them from dates of payment:

SUBSCRIBERS.	INTEREST.	DISCOUNT.	REMARKS.
Justin S. Morrill	$140 83	$1,100 00	Record p. 598
John G. Murray		100 00	Record p. 599
Mrs. C. S. Plumb	3,478 42	9,300 00	Record p. 600
Mrs. E. A. Peter, T. J. Peter	631 39	28,000 00	Record pp. 601–602
Samuel Thomas	341 42	8,300 00	Record p. 602
Totals	$4,592 06	$46,800 00	
Total Int. and Dis.			$51,392 06

In addition to these amounts, Mrs. Peter was credited with inter-

est amounting to five thousand dollars on a note of the company's not shown in the accounts.

Deposition of T. J. Peter, Record, p. 241.

The coupons were credited under the terms of the resolution of the Board of Directors, adopted at the meeting held January 1, 1886, and under which the thirty per cent. assessment was levied.

Record, p. 191.

The discounts are explained by Mr. Murray. Record pp. 224–225. The subscribers were charged with bonds at their face value and then credited with ten per cent. discount. The interest credited was the interest which was allowed on payments made by subscribers from the time they were made until October 1, 1882, when the bonds began to draw interest.

Record, p. 226; Record, p. 180.

It thus appears that of this sum of		$235,955 63
There was paid in coupons from the bonds	$63,876 00	
By discount and interest	56,392 00	
A total of		120,268 00
Leaving the whole amount realized by the company from stock subscribed for and issued		$115,687 63

ISSUE OF STOCK.

Mr. Murray, testifying on the reference in the case of P. B. Plumb, Trustee, vs. Brierfield Coal & Iron Company, on July 25, 1888, says:

"The present owners of stock are as follows:

T. J. Peter holds	1 share
C. L. Bates	1 share
E. T. Peter	1 share
E. T. Peter, trustee for E. A. Peter	697 shares
Laura E. Williams	500 shares
Esther A. Peter	500 shares
Mrs. C. S. Plumb	990 shares
A. O. Bebee	800 shares
Calvin S. Brice	30 shares
Justin S. Morrill	110 shares
John G. Murray	6 shares

Making the total outstanding shares .....3636"

Record, p. 406.

In addition to these shares, eleven hundred and sixty shares, which were included in Certificate No. 36, stood on the books until July 29, 1887, in the name of T. J. Peter, trustee, and four shares which were included in Certificate No. 31, stood on the books until that day in the name of John G. Murray, when they were surrendered to the Company. Adding these to the shares stated above, and we have the total outstanding stock on July 29, 1887, 4,800 shares. The surrender of these shares will be referred to hereafter.

The whole of the stock certificate book will be found in the record, marg. pp. 1127–1173, both inclusive.

On the 25th July, 1887, after the debts to appellants had been contracted, and after the corporation, as the result proved had become insolvent, Plumb as trustee, made a demand for a further conveyance (Record, p. 17), and a meeting of the Board of Directors was held to consider this demand on July 29, 1887.

At this meeting held on the 29th of July, 1887, the proceedings of which are shown on pages 192–195 of the Record, the directors present were T. J. Peter, John G. Murray and E. T. Peter, the son of T. J. Peter. These directors at this meeting proceeded to elect Charles L, Bates to fill a vacancy caused by the resignation of A. A. Southwick. The minutes show that—

"The following resolution was offered by John G. Murray and adopted, and the president and secretary authorized to act in accordance therewith :

> Whereas, Thomas J. Peter, on the 4th day of May, 1882, subscribed for twelve hundred shares of the capital stock of the Brierfield Coal & Iron Company of the par value of one hundred dollars each, upon which subscription he has paid in money the sum of eighty-three thousand six hundred and forty dollars and eighty-five cents ($83,640.85) ; and whereas, said Thomas J. Peter has become the surety of said company for the loan from time to time to it of the sum of seventy-seven thousand eight hundred dollars ($77,800), which money has been used in the current business of said company, and has put his private property in pledges to secure such indebtedness to various persons and banks, all of which indebtedness appears on the books of said company as being unpaid :
>
> Resolved, That the balance unpaid on such subscription stock, namely, the sum of thirty-six thousand three hundred and fifty-nine and $\frac{15}{100}$ dollars ($36,359.15) shall not be called

for or demanded of said Thomas J. Peter, but shall remain in his hands as indemnity to him against his said liabilities for said company so secured by him, and he shall be in no wise liable to pay the balance that is or may be owing to said company on the said stock subscription, but the said stock shall be held and considered as being fully paid up, and the unpaid balance due thereon shall be fully cancelled and shall so remain credited on the books of the company until said company shall have fully released and discharged him from his said liabilities for said company and shall have relieved the property pledged by said Thomas J. Peter as security for the debts of said corporation, and the secretary of said company shall deliver to said Thomas J. Peter a certificate that his stock is fully paid up, and said Peter may, if he see proper, assign and transfer said certificates of stock on the books of said company as stock fully paid up."

Record, p. 193.

These minutes also show that the "following resolution was offered by John G. Murray and adopted, and the president and secretary directed to act in accordance therewith:

'Whereas, There was issued to Thomas J. Peter, as trustee, on the 28th day of October, 1884, twenty-eight hundred and fifty-nine shares of the capital stock of the Brierfield Coal & Iron Company at the par value of one hundred dollars each; and whereas, said Thomas J. Peter has paid to said company the sum of $83,640.85 on his subscription of $120,000, and Esther A. Peter has paid $50,000 on her subscription of $50,000; and, whereas, her stock for said payment was issued to Thomas J. Peter, trustee; and, whereas, said Thomas J. Peter offers to surrender eleven hundred and sixty shares of said capital stock, which was improperly and illegally issued, and presents the same for surrender; There—

Resolved, That the Brierfield Coal & Iron Company accept the surrender to said company of certificate number 36 for 2,859 shares of its capital stock, and hereby authorizes the issue of certificate number 44 for 500 shares of capital stock fully paid up to Esther A. Peter and the issue of the certificate number 41 and number 42 for 1197 shares of fully paid-up capital stock to Thomas J. Peter or his assigns.'"

Record, p. 194.

E. T. Peter offered the following resolution, which was adopted and the president and secretary directed to act in accordance therewith:

> "Whereas, On the 23d day of November, 1883, ten shares of the stock of the Brierfield Coal & Iron Company were, without authority of the Board of Directors of the Brierfield Coal & Iron Company, issued to John G. Murray, on which he has paid the sum of six hundred dollars, and desires to surrender to the said company four shares of said stock;
>
> Resolved, That the Brierfield Coal & Iron Company accept the return of four of said shares of stock from said John G. Murray, and that the president and secretary be directed to issue to him a new certificate for six shares of said company's capital stock in lieu of the remaining six shares in certificates for ten shares, and that said six shares are fully paid-up and constitute said Murray a stockholder of said corporation to that extent."

Record, p. 193.

By these three resolutions, the Board of Directors authorized the cancellation of eleven hundred and sixty-four shares of the capital stock of the company, and undertook to release Thomas J. Peter from an admitted liability on stock subscription of thirty-six thousand three hundred and fifty-nine $\frac{15}{100}$ dollars ($36,359.15).

STOCK ISSUED IN LIEU OF CERTIFICATE NO. 36.

In lieu of this certificate No. 36, for 2,859 shares, certificate No. 38 was issued to Charles L. Bates; No. 39 to Edward T. Peter, one share; No. 40 to Edward T. Peter, trustee for Esther A. Peter, 697 shares; No. 41, Esther A. Peter, 500 shares; No. 42 to Laura E. Williams. Numbers 37, 38 and 39 are dated January 12, 1887. Numbers 41 and 42 are dated July 29, 1887. The three last certificates, 40, 41 and 42, recite that they were issued in lieu of No. 36, for 2,859 shares, of which 1,160 were returned to the company by order of the Board of Directors.

The falsity of these dates is rendered perfectly apparent by reference to the date of the resolution authorizing the surrender of 1,160 shares, which is shown by the minutes to have been on the 29th of July, 1887.

ISSUE OF STOCK TO THE PETER FAMILY.

In order to properly understand this surrender by Peter of his

stock, it is necessary to state in detail in what manner this stock had been originally issued, and to whom, copies of the original certificates being appended to the record.

There was issued in the name of Esther A. Peter the following stock:

Certificate No. 1, October 1, 1882	150 shares
Certificate No. 16, April 13, 1883	350 shares

To T. J. Peter, trustee for Edward F. Peter—

Certificate No. 2, October 9, 1882	20 shares
Certificate No. 17, April 13, 1883	30 shares

To T. J. Peter, trustee for Florence J. Peter—

Certificate No. 3, October 9, 1882	20 shares
Certificate No. 18, April 13, 1883	30 shares

To T. J. Peter, trustee for George F. Peter—

Certificate No. 4, October 9, 1882	20 shares
Certificate No. 19, April 13, 1883	30 shares

To T. J. Peter, trustee for Blanche E. Peter—

Certificate No 5, October 9, 1882	20 shares
Certificate No. 20, April 13, 1883	30 shares

To T. J. Peter, individually—

Certificate No. 6, October 9, 1882	170 shares
Certificate No. 21, April 13, 1883	150 shares
Certificate No. 30, November 23, 1883	1190 shares
Certificate No. 32, March 18, 1884	480 shares

These several certificates represent in the aggregate two thousand seven hundred and ninety shares.

Edward F. and George F. Peter were the sons, and Blanche E. and Florence J. were the daughters of Thomas J. and Esther A. Peter,

In addition to these, Certificate No. 35 was issued to T. J. Peter. October —, 1884, for one share.

CERTIFICATE NO. 36.

On October 28th, 1884, all of these certificates mentioned, except No. 35 for one share, were surrendered by T. J. Peter to the company (as shown by the stub), and in lieu of cash, and of these certificates, Certificate No. 36 was issued in the name of T. J. Peter, trustee, for 2859 shares, and this stock remained on the books of the company in

that form, from that date until July 29th, 1887. This Certificate No. 36 is set out on page 208, and the *fac simile* of the stub and certificate is shown on page 1169.

The manner in which this stock was issued is explained by Mr. Murray, on page 224 of the Record, as follows:

> "Q. You stated that three hundred and seventy-five thousand dollars worth of stock was subscribed for. Will you please tell me how it is that on the issue of this certificate for 2859 shares to Mr. Peter, as trustee, the outstanding stock then amounted to 5123 shares?
>
> A. Yes, sir. According to the original terms of the subscription, as I have testified, when a subscriber to the capital stock paid nine hundred dollars he received a bond of the Brierfield Coal & Iron Company for one thousand dollars and ten shares of the capital stock of the Brierfield Coal & Iron Company. When the three hundred and seventy-five thousand dollars had been paid in, less the ten per cent. discount which was allowed on the bonds, they having been sold at ninety per cent. of their par value, it was found by company that they needed more money. They had in their treasury the remaining one hundred and twenty-five bonds. These bonds *were bought by Mr. and Mrs. Peter, and upon the delivery to them of these bonds they were delivered to them in exactly the same way as they had been delivered to other persons buying bonds, ten shares of the capital stock for each nine hundred dollars paid in; so this stock was issued without ever having been subscribed for or without any authority from the Board of Directors of the company.* I bought one of the bonds myself; paid nine hundred dollars and received with it ten shares of the stock in the Brierfield Coal & Iron Company. Though never having been a subscriber to the capital stock, I received it on the same basis as it had been given to those subscribing to it."

PETERS'S TESTIMONY ON THIS STOCK.

T. J. Peter, the husband of Esther A. Peter, undertakes to explain away any liability of his wife for these shares, or in fact for any other shares, beyond the fifty thousand dollars which she claims to have paid. He is examined by his counsel and testified as follows:

"Q Did Mrs. Peter ever make any subscription to the stock of this company other than this fifty thousand dollars?

(London objects on the ground that the records themselves show.)

A. No, sir.

Q. Did Mrs. Peter ever authorize anybody else to make any subscription for her to that company?

A. Not that I know of.

Q. For her?

A. Not that I know of. She never authorized me. I made it at first for her myself.

Q. Did she ever have any other certificates of stock other than for this fifty thousand dollars?

A. No, sir.

Q. I see on the books here—I see certain certificates of stock issued to a trustee for her benefit or as trustee for her. Did Mrs. Peter ever authorize those certificates to be issued?

A. No, sir.

Q. Did she ever have them in her possession, or either of them?

A. No, sir.

Q. Where were they?

A. In the safe of the Brierfield Coal & Iron Company from the time they were issued to the time when they were returned and cancelled.

Q. Some were not returned and cancelled. Where are they?

A. My son has certificates issued to him as trustee.

Q. Where is the other?

A. Mrs. Peter has one issued to her. My sister, Mrs. Williams, has one issued to her.

Q. How much did you pay on the stock which you subscribed for; how much had you paid when this suit was commenced?

A. About eighty-three thousand dollars, I think. It was correct as Mr. Murray stated it.

Q. That is, eighty-three thousand and odd dollars?

A. Yes, sir.

Q. Of that stock that you subscribed for, how much was issued to trustee for the benefit of Mrs. Peter—of the stock you

subscribed for? You say you paid eighty-three thousand dollars on it before the suit was commenced. Of that amount how much was issued to trustee for the benefit of Mrs. Peter?

A. I don't know that I understand your question. 697 shares in a certificate and forty to me in one as trustee for my wife. Her certificate was issued to her.

Q. For fifty thousand dollars?

A. Yes, sir.

Q. That is all?

A. Mrs. Peter has two certificates of stock now.

Q. The one for fifty thousand dollars she subscribed for and paid for?

A. Yes, sir; and one to Edward S. Peter as trustee for 697 shares.

Q. Before this certificate for 697 shares as a part of the stock you subscribed for and paid on stock eighty-three thousand dollars?

A. Yes, sir.

(London objects, because it appears from the subscription book that it is a part of the 2,859 shares which were issued to T. J. Peter as trustee for Mrs. E. A. Peter.)

Q. Did Mr. Peter ever have in her possession, as her own, any other certificate of stock than these two?

A. She never had but the one. She has not that now; my son has that. She has only the fifty thousand dollars which she paid for.

Q. What was the purpose of having that stock in the name of Edward Peter, trustee for Mrs. E. A. Peter, No. 40?

(London objects on the ground of illegality and irrelevancy.)

A. I owed my wife and sister money, and these certificates of stock were issued to be held as collateral, so that if any money could be made out of them it could be paid to them for the money I owed them."

Record, pp. 236–237.

ENDORSEMENT OF CERTIFICATE NO. 36.

It will be observed that on the back of Certificate No. 36, Record, p. 1170, is the following endorsement:

"*This stock is held by me as trustee for Esther A. Peter, whose money paid for it.*

T. J. PETER."

Her husband, T. J. Peter, was examined in reference to this endorsement, and testified as follows:

"Q. That Certificate No. 36; look at it. Whose handwriting is that endorsement, 'This certificate is held by me for Mrs. Peter, whose money paid for it?'

A. Mine.

Q. Who paid for that?

A. There had been no money paid at that time.

Q. Please explain, then, what you meant in that endorsement by saying that her money paid for it?

A. I put that endorsement on it to put it away in the safe, so, in case of death or anything of that kind, if anything was received on it, she would have her money."

Record p. 239.

FURTHER ASSURANCE.

As is shown by the proceedings of the meeting held July 29th, 1887, Preston B. Plumb, as trustee, demanded the execution of a deed of further assurance under the provisions of the 6th section of the original mortgage or deed of trust (Record, p. 14), and the Board of Directors ordered the president and secretary to forthwith execute the deed of further assurance which was then presented, and is shown as Exhibit "A" to the original bill, Record, p. 9, and which was executed on that day.

At this time all the bonds, with the exception of *ninety-two*, were held by the original stockholders of the company. I quote from the testimony of T. J. Peter, Record pp. 184–185.

"Q. At the time that deed of further assurance was made did not the bondholders and stockholders consist practically of the same persons with the exceptions that were stated by Mr. Murray of the banks that held those papers as collateral security?

A. Yes, sir; to a certain extent they did.

Q. Will you state who were bondholders who were not stockholders?

A. I stated on the other examination and went into details. Mrs. Pomeroy, 9 bonds; Alabama National Bank, 9 bonds; the State National Bank, 28 bonds; the Commercial Bank, 26 bonds, and J. T. Fitzgerald, 20 bonds; my wife, who was a stockholder to the amount of fifty thousand dollars, and holds 218 bonds."

Of these ninety-two bonds, T. J. Peter had acquired all except the thirteen held by Fitzgerald, before the final decree in the Plumb case, leaving in the hands of outside parties thirteen bonds, and possibly Mrs. Pomeroy's 9 bonds.

ACTUAL INTENT.

On cross examination by counsel for the company to the intent with which this deed of further assurance was made, the following occurs in the testimony of T. J. Peter:

"Q. In executing that deed of further assurance was there any intention or purpose on the part of the officers or stockholders of the company to defeat or defraud, or was it executed with *the* intent and purpose of carrying more fully into effect the first deed of trust?

A. There was certainly no intention to defraud any of the creditors. We made the deed because we thought we had to do so under the original trust deed.

Q. Do you know under whose advice, if any, the suit of Chambers, trustee, against The Brierfield Coal and Iron Company was instituted in this Court?

(Objection on the ground of irrelevancy and illegality.)

A. Under the advice of Senator Morgan.

Q. Senator Morgan was the attorney and counsel for Senator Plumb?

A. Yes, sir.

Q. Do you know of any fraudulent intent or purpose on the part of Senator Plumb in having this suit instituted in this Court?

(Objection on the ground of illegality and irrelevancy.)

A. I know that it was the intention and expectation that it was the best way to protect the interest of the bondholders and creditors and stockholders. We thought if that were not done there were many attachments which would fritter away the entire value of the property. We thought if we could prevent that the property would probably sell for enough to pay up; but there has been such hard times in the iron business and such depression in that class of property that we abandoned all hope."

Record, p. 181.

The original deed of trust, which is recited at length in Exhibit "A," conveys the following property:

"All of the real and personal property now owned by said company situated in the State of Alabama, and all the real and personal property that may hereafter be acquired and owned by said company wherever the same may be situate, together with all the franchises, tolls, incomes, rents, issues, and profits of said company, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same and any and every part thereof, with the appurtenances thereto belonging."

Record, p. 11.

The deed of further assurance specifically describes the real estate (set out in the Record, pages 18 to 26, both inclusive,) and personal property, and in this last includes the goods in the store and "*moneys, bills receivable, accounts and credits of every kind wherever situate,*" Record, pp. 26, 27, and also "*all debts of every kind due to it and all rights of action and credits of every kind.*"

By agreement of the parties, Exhibit "A" was to be received in evidence in the cause, of both the original deed of trust and the further assurance. Agreement, Record p. 163.

DEMAND FOR POSSESSION BY TRUSTEE.

On August 2, 1887, four days after the execution of the further assurance, the Board of Directors of the Brierfield Coal & Iron Com-

pany held their last meeting, and at this meeting the trustee, Preston B. Plumb, made a demand for the possession of all the property of the company on the ground that there had been a failure on the part of the company to pay interest on the sinking fund for more than six months, and pursuant to this demand the company turned over to John G. Murray, its secretary, as the agent of Preston B. Plumb, trustee, all of the property and assets of every kind and description belonging to the Brierfield Coal & Iron Company.

Record, pp. 195, 196.

CONDITION OF COMPANY.

The company continued its operations until August 2, 1887, the day the possession of its property was surrendered to P. B. Plumb, trustee.

On this day the unsecured indebtedness amounted to.....	$212,735 18
(Exhibit "A" to Murray's deposition; Record, pp. 197–203.)	
From which should be deducted the amount due to the Memphis bank, secured by pledges of nails (record p. 168) about.....	10,000 00
And, in addition, the company owed for labor (shown in detail, Record, pp. 560–572) about.....	10,000 00
Which left the total of unsecured indebtedness on August 2, 1887, about the sum stated above.....	$212,735 18

T. J. Peter testifies that he did not think that the Brierfield Coal & Iron Company was ever insolvent, and that it had made no default in its payments prior to the 2d day of August, 1887. (Record, pp. 167, 168.) He admits, on page 172 of the Record, that the company had suffered some embarrassment. On cross-examination by the counsel for the company, he states the real condition:

> "Q. When did the company first become embarrassed and unable to meet its obligations as they matured?
>
> A. Well, I would say from recollection, a year before; within a year from the time we suspended. If the stockholders had all paid up their assessments, I think we could have gone through without any trouble."
>
> Record, p. 180.

Mr. Murray, the Secretary, is unable to say whether any profit had ever been made by the company. He says (Record, p. 227), in answer to the question:

"Q. Did the company ever make any profits?
A. Never declared a dividend.
Q. Did it ever make a profit?
A. Never kept a profit account."

T. J. Peter, the President, shows (Record, p. 173) that the co m pany had made losses of at least thirty thousand dollars.

AMOUNT OF INVESTMENT.

The amount invested in the enterprise is stated by T. J. Peter to have been about $800,000, composed of the following items, on page 174, Record:

From bonds	$450,000
Subscription	174,000
Unsecured debts	200,000

On cross-examination, he says (pp. 179–180):

"Q. You stated in the examination-in-chief that eight hundred thousand dollars went into the plant. Was it not, in fact, nearly nine hundred thousand dollars?

A. The books show about nine hundred thousand, but in that was included sixty-four thousand of interest and this loss, amounting to nearly thirty thousand dollars. Of course, the people who put *their* money *in were entitled to interest*, and notwithstanding—what I mean to say is, exclusive of bonds and loss which occurred in the last year of operation, the books show still about eight hundred thousand dollars invested in property."

J. G. Murray estimates the cash investment as between $700,000 and $800,000. Record, p. 411.

The record shows the following investment, conceding that ninety cents was realized on the bonds:

Bonds	$450,000
Realized from subscriptions	115,268
A total of	$565,268
In addition to this, the unsecured debts, amounting to	212,000
went into the enterprise, making the Total expenditures by the stockholders and creditors	$777,268

THE PLUMB BILL.

On August 3, 1887, the day after the possession of the property of the company was surrendered to Murray, as the agent of P. B. Plumb, trustee, Mr. Plumb filed a bill in the Circuit Court of the United States for the Middle District of Alabama, which is to be found in the Record, pp. 253, 264.

The purpose of filing this bill, stated by T. J. Peter:

> "I stated that after consultation with Gen. Morgan and Gen. Pettus and a discussion among ourselves, it was thought we could best protect the interests of the bondholders, stockholders and the general creditors by commencing this action in the name of P. B. Plumb, in the United States Court, in order to prevent the property from being frittered away by attachments and lawsuits."
>
> Record, p. 185.

The testimony of Peter, that the Plumb suit was commenced "after consultation with Gen. Morgan and Gen. Pettus and a discussion among ourselves" shows that the suit was collusion between the trustee and the corporation and its stockholders; indeed it could not be otherwise, for all the bonds secured by the mortgage deed of trust to Plumb, except the thirteen held by Fitzgerald and, possibly, the nine held by Mrs. Pomeroy, were actually or virtually held by the persons who constituted the corporation.

In this bill the stock subscriptions are stated as follows:

> "The subscriptions of stock, as they appear upon the books of said company, are as follows:

T. J. Peter and associates	$120,000 00
E. A. Peter	50,000 00
R. L. McCalley	5,000 00

C. C. Huckabee	15,000 00
G. I. Seney and associates	75,000 00
C. S. Plumb	50,000 00
Plumb & Hood	50,000 00
Justin S. Morrill	10,000 00

Orator states that Thomas J. Peter, by his authority, subscribed for the stock in the foregoing list in the name of C. S. Plumb and Plumb & Hood. The subscription was, in fact, made for Mrs. Carrie S. Plumb, the wife of orator, as an investment for the benefit of the separate estate of Mrs. Carrie S. Plumb, and the payments made thereon were made from her separate estate, and the certificates for such stock were issued to her upon and in virtue of both of said subscriptions and to the full amount thereof, so that neither your orator nor Calvin Hood ever became the owners of said stock or any stock in said Brierfield Coal & Iron Company or any of the bonds of said Company."

Record, p. 254.

And the payments on subscriptions as follows:

"The books of said company show that the following payments have been made upon the stock of the several holders thereof, either by themselves or their assignors: On the stock of Carrie S. Plumb the sum of $43,089.78; on the stock of Justin S. Morrill, $6,250.00; on the stock of Samuel Thomas, $23,745.00; on the stock of C. S. Brice, $810.00; on the stock of G. I. Seny, $22,800.00, and on the stock of Esther A. Peter, $50,000.00, and on the stock of T. J. Peter, $83,640.85, and on the stock of John G. Murray, $600; said shares of stock are liable in the hands of the present holders, to be assessed for the payment of any sum remaining due and unpaid thereon. Orator has neither the power nor information as to the facts that are necessary to the statement and settlement of the account between the shareholders and said company respecting their liabilities for such assessment, nor has he any power to make such assessment under the deed of trust hereinafter mentioned, and the assistance of a Court of Equity is necessary for these purposes."

Record, p. 255.

This bill also contains the following allegations:

"The said company having failed to pay the interest on

its bonds secured by the deed of trust to orator, and having failed to provide any sinking fund for the redemption of the bonds, as required in said deed of trust, orator was bound, as he is advised, to demand the possession of the trust property and to conduct, operate and administer the same according to the requirements of said deed of trust. No creditor of said company secured by said — or otherwise, has demanded or required of orator that he should proceed to a strict foreclosure of said deed of trust either by a sale of the property or by a bill in equity to foreclose the same. Orator states it as his belief, and believes that this opinion will be concurred in by all parties concerned in interest, that a sale of the property on foreclosure of the trust conveyance without a further effort to develop the property so that it will pay all the debts of the company would be ill-advised and necessarily hazardous to all concerned; but orator states that he will not be able without the active assistance of the Court in allowing him to borrow money on the faith and credit of the property, supported and sustained by the decree of this Honorable Court, to render the property self-sustaining or to pay the laborers the sums that are due them or to realize a sum sufficient to meet the interest on the bonds of the company or to pay any part of the unsecured debts of the company.

And if this Honorable Court shall deny to orator its assistance in so obtaining money to conduct the business of the company he will ask leave to amend this bill so as to bring before this Honorable Court the question whether he shall proceed to close the trust under a decree of foreclosure and sale.

Orator states that the property conveyed to him in trust is capable under proper management, and with its credit restored under the orders of the Court, of meeting the current expenses of its management in the manner provided in said deed of trust, and of paying all its debts, and of yielding to the shareholders a substantial profit on their investment. Orator further states that he is advised and believes that it is necessary to his security in the administration of said trust estate under the third section of said deed and under its other provisions, and also to secure the proper management of said property, that he should have the ruling and direction of this Honorable Court, and that it is also necessary that an account should be stated

with each stockholder and each bondholder of said company to ascertain what sums of money such stockholders may owe said company, if any, and what sums of principal and interest is due each bondholder secured by said deed of trust, and that they may receive from time to time such rateable and proper allowances on their debts as the Court shall direct the trustee to pay over to them."

Record, p. 262.

And also the following:

"And to prevent the forced sale of the trust estate while it is capable of (being) made adequate to the payment of all its indebtedness, and to prevent unnecessary and vexatious litigation, orator states that it is necessary that this Honorable Court will take jurisdiction and control of said trust estate and of its management and administration, and to protect and preserve the same from time to time by such orders and decrees as may be found necessary and lawful."

Record, p. 263.

The prayer of the bill, after the prayer for process and that the creditors and others having claims be allowed to come in and make themselves defendants, concludes as follows:

"Orator further prays that an account be taken and stated between the said Brierfield Coal and Iron Company and each stockholder and bondholder thereof, to show what sums, if any, are due and payable to each of them out of any moneys that may come into the hands of the orator derived from such trust property and subject to distribution; that orator may, from time to time, as the Court shall direct, present his accounts of his administration of said trust estate, and that the same may be passed upon and decided by this Honorable Court, and that this Honorable Court will in all things protect said trust estate and direct your orators as to the administration of the same and the sale thereof, if a sale is found to be the best method of disposing of the property or any part thereof for the benefit of all concerned. Orator further prays that he may forthwith be authorized and directed by the order and decree of your honor's Court to borrow, on the faith and security of said trust property, the sum of twenty-five thousand dollars, to be applied by him

as said trustee to the payment of the wages *and to* operatives and laborers and employes of said company and, so far as it will go, to the satisfaction of the preferred claims against said property falling due at an early date as shown in this bill, and thus to avoid the sacrifice of said property or valuable portions thereof; and said orator further prays that he may be authorized and directed by such order or decree of this Court to issue certificates of indebtedness or other evidences of indebtedness, in such sums and from and payable at such times as may be prescribed by such decree, and that said certificates of indebtedness or other evidences of indebtedness may, by the said order or decree, be made and constituted a prior lien on all of said trust property over and above all other liens now existing, except taxes, the said certificate not to be sold or registered or hypothecated for less than their face value, and that this Honorable Court will grant to orator such other or further general or special relief in the premises as to equity and good conscience may appear meet and proper."

Record, pp. 263-264.

The original deed of trust or mortgage and the further assurances are made exhibits by an amendment filed on the 6th day of August, 1887. Record, p. 257.

ISSUE OF CERTIFICATES OF INDEBTEDNESS.

On August 6th, 1887, Preston B. Plumb, before any answers were filed, and without notice, made a motion for authority to borrow $25,000 (Record, p. 300), and authority was given, without notice, to issue certificates for this amount. Record, pp. 301-303.

The Brierfield Coal and Iron Company answered this bill on August 11, 1887, admitting all the allegations to be true as alleged in the original bill in the case at bar (Record, p. 4) and not denied by the company in their answer in that case.

As appears by the answer in the (Record, p. 369), this original answer was, by leave of the Court, stricken out and the substituted answer there shown was filed on January 14, 1888, which was after the bill was filed in the case at bar.

On November 21st, 1887, W. L. Chambers was, by order of the Court, substituted as trustee, in place of Preston B. Plumb (Record, p. 337), and the suit was after this conducted in his name.

On January 7th, 1888, W. L. Chambers, the substituted trustee, filed a petition for authority to issue $27,000 of additional certificates of indebtedness. Record, pp. 350-353. And this petition was supported by the affidavits of Thomas J. Peter (Record, pp. 353-354) and John G. Murray (Record pp. 353-356). Notice of this petition was only given to the attorney of C. C. Huckabee and R. L. McCalley. Record, p. 353.

On January 16th, 1888, the Court, without notice, authorized the substituted trustee to issue additional certificates to the extent of $27,000. Decree, Record, pp. 376-377. These certificates are, by the terms of the decree, made a first lien on the property of the company.

On May 15th, 1888, the substituted trustee was, without any notice, authorized by a decree to borrow the further sum of $10,000, which was declared a lien on the property. Record, pp. 384-385.

All of the defendants appeared and answered, except Justin S. Morrill, and the bill was taken as confessed as to him.

REFERENCE IN PLUMB CASE.

On July 13th, 1888, the cause was referred to a Special Master. Record, pp. 387-390.

Evidence was taken before the Master and the several persons whose names are hereinbefore stated as bondholders filed the bonds and coupons for allowance. Record, pp. 396-550.

The Master reported and the cause was submitted for final decree July 3d, 1888. Record, pp. 403-404.

The report of the Special Master appears to have been omitted from the Record, but the final decree rendered shows that a report was made. Record, p. 581.

FINAL DECREE IN PLUMB CASE.

This final decree, after declaring the original mortgage and the further assurance valid liens on the property, directed a sale of the property by a Special Master. Record, pp. 581-591.

The proceeds of the sale were directed to be applied—

1. To costs.
2. To debts contracted under the orders of the Court.
3. The amount due Lillian A. Carter, as shown by the report of the Special Master.
4. The residue to be distributed among the bondholders.

Record, p. 592.

The decree then provides that the sum of $38,278.42, found to be due by Mrs. Carrie S. Plumb to the company, should be applied to the payment *pro tanto* of the bonds and coupons filed by her, and the amounts found to be owing by Justin S. Morrill, Samuel Thomas, George I. Seney and Calvin S. Brice on stock subscriptions were, in like manner, to be applied to the payment *pro tanto* of the bonds and coupons filed by them respectively.

The balances found to be due the several persons who filed bonds and coupons, and not therein required to be paid to the debts due by them for stock subscriptions, were allowed to be applied to the purchase money of the property when sold. Record, pp. 592-593.

The Brierfield Coal and Iron Company introduced in evidence the following act of the General Assembly of Alabama:

Exhibit No. 1 to Testimony of Jno. G. Murray.
Record, pp. 493, 494, 495.

"No. 145. H. B. 77.

An act to amend and ratify the charter of the Brierfield Coal and Iron Company, of Bibb County, Alabama.

Section 1. Be it enacted by the General Assembly of Alabama, That, whereas, on the 27th day of April, A. D. eighteen hundred and eighty-two, the incorporators of the Brierfield Coal and Iron Company, located at Brierfield, in Bibb County, Alabama, filed in the Probate Court of Bibb County, Alabama, their declaration to become a body corporate, and by due proceedings became a body corporate according to the statutes in such case made and provided; and whereas, it is deemed proper and expedient to grant to said corporation certain powers it cannot secure under such general incorporation: therefore,

Be it enacted, That said company is hereby declared to be a body corporate, under the laws of this State, by its present name and style.

Sec. 2. Be it further enacted, That in addition to the powers, rights, and privileges and franchises now owned or possessed by said company, it is hereby authorized and empowered to locate, construct, and bring into final completion one or more railways, of such gauge and as many tracks as it may deem proper, from its mines, works, ore beds, coaling and coking grounds and manufactories to each other, and to any point or points on any of the navigable waters of this State,

and to such depot or depots as they may choose to establish along the lines of any of the railways now constructed or that may hereafter be constructed in this State, and to connect with such railways and use the same in the conduct of the business of the company and in the transportation of the products of their mines, manufactories, and other works; and, upon filing in the office of the Secretary of State an agreement to abide by the lawful rules, regulations, rates and tariffs that may be established by the Railroad Commission of this State, may engage in the carriage of persons and property for the public. Said company may also construct for the use or lease of or may purchase any railway or railways, now or hereafter constructed, connecting in whole or in part any of its property with any of the railways or navigable waters of this State, or that may be made useful in making such connection. Said company may also purchase, construct, charter or hire tugs, barges, steamboats and other means of water transportation, and may use them in in the conduct of its business and in the transportation of the products of its mines and manufactories on any of the navigable waters of this State, and may also use the same in the transportation of persons and property for the public.

Sec. 3. Be it further enacted, That said company is further authorized to lease, purchase, erect and establish all such buildings, fixtures, structures, machinery, depots, docks and wharves as may be needed, convenient or useful in carrying on its business.

Sec. 4. Be it further enacted, That said company is authorized to survey and locate its lines of railway over the lands of others for the purpose of defining and describing accurately the parts of said lands which the company wish to have condemned for the right of way, and the said company shall have the right to condemn for its use as right of way a strip of land one hundred feet wide over the lands of others; and proceedings to condemn the lands of others for the use of said company shall be governed and regulated by the general laws of this State in reference to railroad companies; provided, that just compensation shall be made to the owners of such lands before the company takes possession thereof.

Sec. 5. Be it further enacted, That said company are hereby granted the rights, remedies, powers and privileges, and sub-

jected to the obligations contained in sections 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841 and 1842, in chapter one, title one, part two, of the Code of Alabama of 1876, and all amendments thereto now in existence.

Sec. 6. Be it further enacted, That the capital stock of said company may be increased from time to time as the business and necessities of the company may demand, not contrary to the laws of the land.

Sec. 7. Be it further enacted, That said company shall have the power from time to time to issue bonds for the payment of money borrowed or for its indebtedness secured by mortgage or mortgages on its property or any portion or portions thereof.

Sec. 8. Be it further enacted, That said company may sell its property or any part thereof at any time or times.

Approved December 12, 1884."

The following agreement was made by counsel in reference to depositions, exhibits, books and the record in the case of W. L. Chambers, trustee, vs. Brierfield Coal & Iron Company, No. 103, a transcript of which is shown in the Record, beginning with page 253.

"It is agreed between counsel for the respective parties that the depositions taken on the reference in the case of W. L. Chambers, trustee, vs. Brierfield Coal & Iron Company *et al.*, No. 103 in this Court, together with the exhibits, books, and records, may be used as evidence in this cause by complainants and defendants, with the right of either party to object on account of *of* irrelevance of any part thereof. It is further agreed that any part of the record in the case of W. L. Chambers, trustee, vs. Brierfield Coal & Iron Company, No. 103 in this Court, may be read in evidence in this cause by any of the parties hereto, subject to objection on account of its irrelevancy or sufficiency as evidence, but no objection is to be made as a matter of form."

Record, p. 178.

The Circuit Court denied the application for a receiver in this cause on May 25th, 1888. Record, p. 96.

AMENDED BILL.

On July 2d, 1889, after the testimony was taken, the complainants offered for allowance, as upon the hearing, an amended bill of

complaint and on the 5th day of July, 1889, this amended bill was filed by leave of the Court. The amended bill is to be found in the Record, pp. 113–123.

The changes made by the amended bill are as follows:

1. The original bill alleged that the agreement for the distribution of bonds was made *before* the organization of the company, the amended bill inserts the words "*or after.*" Record, p. 116.

2. The original bill alleged but one subscription (Record, p. 3), the amended bill alleges at length the two subscriptions (Record, pp. 116, 117), the fact that the first was made and reported to the Judge of Probate of Bibb County, and the second was made after the company was organized; avers that the second subscription list was opened without authority of law and that this second subscription contract,

> "so far as it authorized the issue of bonds is contrary to public policy, in violation of the Constitution and Statutes of the State of Alabama, and void."
>
> Record, p. 117.

3. The original bill alleged that interest had been paid on *all* of the bonds, the amended bill adds the words "*or some of them,*" and adds the following alternative averment:

> "If orators are mistaken in the allegation that the coupons have been paid to the several bondholders, then orators aver that the amount of said coupons, or a large part thereof, as they matured were credited to such of said subscribers as were holders of said bonds on their stock subscriptions."
>
> Record, p. 47.

4. A further amendment is as follows, and shown on page 118 of the Record:

> "*And orators are advised, and upon such advice aver and charge, the said bonds so issued by the said corporation were issued without authority of law and in violation of the Constitution and laws of the State of Alabama, and are fictitious and void under the said Constitution and Statutes; and if orators are mistaken in the foregoing allegation*"

5. The amended bill further corrects the number of bonds which

were alleged to be held by the three banks and denies that these bonds were held *bona fide*. Record, p. 119.

6. The amended bill also contains the following additional averments, which are shown on pages 121 and 122 of the record:

> "If orators are mistaken in the foregoing averments, and the notice as required by law was given, and the statutory requirements as to said meeting were complied with, and a majority in value of all of said stockholders met and authorized the issue of said bonds, orators aver that the same were issued without any consideration therefor; and orators further aver that by the Statutes of the State of Alabama in force when said bonds were authorized to be issued and the said mortgage was made it was, among other things, provided that no corporation organized under the general corporation laws of said State should issue bonds for more than two-thirds of its capital stock; and orators aver that at the time said meeting was held and since then the capital stock of said corporation has never exceeded the sum of three hundred and seventy-five thousand dollars ($375,000), the amount subscribed for; and orators aver that the issue of the said five hundred thousand dollars of bonds was in violation of the Statutes of Alabama, illegal and unauthorized; and orators aver that each of said persons who own said bonds took the same with full notice and knowledge of such illegality; and orators further aver that some time after the organization of said corporation, to-wit, in the year 1886, all of the stockholders of said corporation were informed of the invalidity of said contract of subscription, whereby they were to receive stock and bonds for their subscription as aforesaid, and under which all of said stockholders had received the bonds held by them respectively; and orators aver that the Board of Directors of said corporation, with full knowledge of the illegality of the issue of said bonds, and knowing that said stockholders, who were also bondholders, had been informed of such illegality, and after said corporation had become insolvent, authorized the execution of the further assurance, which was afterwards and pursuant to such authority executed and delivered to the said P. B. Plumb as trustee, and a copy of which is attached to the original bill filed in this cause and marked Exhibit A, and is prayed to be taken and treated as a part of

this amended bill, whereby the said corporation undertook to convey and tranfer to said Plumb as such trustee, in addition to all of the other property of every kind and description owned by said corporation, to secure said bonds held by said subscribers as bondholders, all the unpaid stock subscriptions owing and due to said corporation by these same bondholders as stockholders in fraud of the creditors of said corporation.

And orators aver and charge that said Plumb, when he received said further assurance, well knew of the illegality of said bonds, and with intent to carry out the fraudulent purposes and design which he and the other defendants who were stockholders had formed to defraud the creditors of said corporation entered into the possession of the property conveyed to him as such trustee, and within a few days thereafter filed the bill in this Honorable Court which is herein referred to and prevented and hindered the creditors of said corporation from asserting their just rights and claims to said property."

Answers were filed to the amended bill, and exceptions to these answers were filed by complainants, but, in view of the subsequent action of the Circuit Court, the rulings on these exceptions are immaterial.

RULING OF COURT ON AMENDED BILL.

On July 18, 1889, the Circuit Court vacated the former order allowing the amended bill to be filed, and disallowed the amendments, and the cause was submitted for final decree on the pleadings and evidence and motion of defendants to dismiss the bill for want of equity. Record, p. 148. On July 19, 1889, the cause was finally heard and at the hearing complainants again asked leave to file the amended bill which had been disallowed. Record, p. 251.

FINAL DECREE.

On July 24, 1889, the Circuit Court caused the following decree to be entered:

"This cause came on to be further heard on the 19th day of July, 1889, a day of said term, and was submitted for decree by the parties on the pleadings and testimony and decree *pro confesso* and motion to dismiss the bill for want of equity and

on motion of complainants to amend the bill of complaint; and, after full argument by counsel of the parties and on due consideration by the Court, it is ordered that the motion of complainants to amend the bill of complaint be, and the same is hereby denied.

And the Court, proceeding to examine and consider the cause on the merits, is of the opinion that the proof fails to establish the case made by the bill, and that the complainants are not entitled to relief.

It is therefore ordered, adjudged and decreed by the Court that the bill of complaint be, and the same is hereby dismissed out of the Court at the costs of the complainants, to be taxed by the clerk, for which execution may issue."

Record, p. 251.

And from this decree the complainants prayed an appeal to this Court, which was allowed in open court by the presiding judge.

Record, p. 252.

Several objections were made to the different parts of the evidence, but they were not insisted upon at the hearing. See note of submission. Record, p. 249. It is more than usually difficult, for reasons before stated, to eliminate the facts which constitute the true history of this corporation, but there is really no controversy in regard to any of them, and, as hereinabove stated, they are indubitably established by the evidence in the cause. These facts are sufficiently averred in the original bill (Record, pp. 1–30), and the amended bill (Record, pp. 113–123), merely conformed the averments to details elicited by the examination of the defendants as witnesses in the cause. From the facts as thus established and averred four questions arize, viz:

FIRST. Whether under the general law of corporations persons about to engage in a coprorate enterprise, and who have become liable on a subscription to its capital stock, and when the corporation has acquired no property or assets, except these unpaid subscriptions to its capital stock, can make a valid agreement amongst themselves for a first mortgage of all the property present and prospective of the corporation, including the unpaid subscriptions to capital stock, whereby the money paid in by each of them for corporate purposes shall be protected against the claims of general creditors of the corporation, and

whether a mortgage, and the bond issued under it pursuant to such an agreement, are valid securities against the general creditors of the corporation, and superior to their right to subject the property of the corporation, including unpaid subscriptions to its capital stock, to the payment of their debts.

SECOND. If this could be done under the general law of corporations, whether it could be lawfully done under the Constitution and Statutes of Alabama, which declare that "no corporation shall issue stock or bonds except for money or labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void."

THIRD. If under the general law and the Constitution and Statutes of Alabama it be lawful for persons engaged in a corporate enterprise to agree to issue to themselves both stock and bonds for the same money paid in, and thus secure a lien to themselves for the money invested superior and paramount to the general creditors of the corporation, and when the corporation becomes unable to pay the coupons on the bonds so issued and to pay the sinking fund provided in the mortgage by reason of the failure and refusal of the stockholders to pay assessments on their stock, the trustee in the mortgage takes possession of all the property of the corporation, and files a bill, collusive as between himself and the corporation and its stockholders, whether the filing of such a bill takes away from the general creditors of the corporation their right to proceed by original bill in the same court to enforce such rights as they may have against the property of the corporation, and the unpaid subscriptions to its capital stock.

FOURTH. Whether, after a corporation has defaulted in the payment of interest and sinking fund, and become largely involved in a general indebtedness, it is competent for a board of four directors to release two of their number from liability to the general creditors of the corporation, on account of indebtedness to the corporation for subscriptions to its capital stock by accepting from them a surrender of the capital stock for which the indebtedness existed.

Each one of these four questions is fairly, fully and necessarily presented by the undisputed facts established by the evidence in this record, and unless each one of them is answered in the affirmative the decree of the Circuit Court ought to be reversed.

Indeed, the respectability of certain of the parties who were induced to follow Peter's lead in this enterprise, and the respectability of the counsel employed, constitute the basis for the only possible

hypothesis on which to rest the decree of the Circuit Court, for there is absolutely no color of law upon which to sustain the legal validity of the mortgage to Plumb in favor of the stockholders and against the general creditors of the corporation. The money paid in by Peter and the others under his lead constituted the *capital* of the corporation—its life blood—without which it could have no legal existence, and any attempt to convert this original capital into a loan is necessarily void for repugnancy as well as utterly inconsistent with common honesty. Every business corporation, from the very nature of its organization, conducts its business on the assurance which the law requires it to give to those who deal with it that their debts will be paid before the capital is returned to those who contributed it.

This fundamental principle of corporate existence, required alike by obvious justice and common honesty, and found in the law of all civilized countries, cannot be affected by the form in which Peter determined to place the securities issued to himself and associates for capital invested in this enterprise. *The money agreed to be invested, and that was actually invested, pursuant to the agreement, was the capital of the corporation, and not a loan to the corporation.* Peter had no more power to convert all the capital of the corporation into a loan and still keep the corporation alive, as was here attempted, than he had to convert water into wine. And we have no record of any Peter who could do that.

DANIEL S. TROY,
of Counsel.

Case No. 15,890.

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 29.

R. S. HOLLINS, Sr., *et al*,
APPELLANTS,
vs.
THE BRIERFIELD COAL AND IRON CO. *et als*,
APPELLEES.

Brief and Argument of ALEX. T. LONDON, for Appellants in Reply.

Roberts & Son, Printers, Birmingham, Ala.

CASE NO. 13,830.

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 29.

R. S. HOLLINS, SR., *et al*,
APPELLANTS,

vs.

THE BRIERFIELD COAL AND IRON CO. *et als*,
APPELLEES

Brief and Argument for Appellants in Reply.

The learned counsel for appellees insist that there is no equity shown in the bill, and apart from the merits, the Circuit Court had no jurisdiction to entertain the bill, because the complainants were creditors at large and failed to allege the exhaustion of legal remedies; and he relies upon

Taylor vs. Bowker, 111 U. S., 110.

Scott vs. Neeley, 140 U. S., 115.

National Tube Works vs. Ballou, 146 U. S., 517.

Since that brief was filed decisions have been handed down in this Court in the cases of *Cates vs. Allen*, 149 U. S., 451, and *Swan Land and Cattle Company vs. Frank*, 148

U. S., 603, and I presume these cases will be relied upon, so I shall consider them all and endeavor to state as clearly as I can, what I conceive to be the distinction between them and the case at bar.

Taylor vs. Bowker was a bill filed by Bowker, a judgment creditor of a corporation whose charter had been surrendered and its assets turned over to certain trustees, against these trustees and certain stockholders to obtain satisfaction of his judgment. The sole question there presented was whether the statute of limitations began to run from the time the judgment was obtained, or only from the return of an execution thereon unsatisfied, and it was held that this last was the date from which the time was to be computed. The principles declared in the case are not disputed nor can they be denied, viz: that where a creditor is seeking satisfaction of a corporate debt out of its stockholders, that he must show that he has obtained a judgment and has exhausted his legal remedies against the corporation.

In *Scott vs. Neeley*, a creditor at large, under the provisions of a statute of Mississippi filed a bill in the Circuit Court of the United States, to subject to the satisfaction of his debt certain property which it was alleged the defendant had fraudulently disposed of, the decree of the Circuit Court was reversed and the cause remanded with directions to dismiss the bill for want of jurisdiction. Mr. Justice Field delivered the opinion of the Court, and declares the rule as to when a court of equity will entertain a bill by a creditor, as follows, p. 113:

"In all cases where a court of equity interferes to aid the enforcement of a remedy at law there must be an acknowledged debt, or one established by a judgment rendered, accompanied by a right to the appropriation of the property of the debtor for its payment, or, to speak with greater accuracy,

there must be, in addition to such acknowledged debt, an interest in the property or a lien thereon created by contract, or by some distinct legal proceeding."

Again on page 114, the Court continues:

"It is the existence, before the suit in equity is instituted, of a lien upon or interest in the property, created by contract or by contribution to its value by labor or material, or by judicial proceedings had, which distinguishes cases for the enforcement of such lien or interest from the case at bar."

In that case the lien was acquired only by the filing of the bill and none existed prior to that time.

In *Cates vs. Allen* the same question decided in *Scott vs. Neeley* is presented, the only difference between the two cases being that this last case was begun in a State court and removed into the Circuit Court.

The Chief Justice, delivering the opinion of the Court, after quoting the above paragraphs from *Scott vs. Neeley*, says, p. 458:

"The mere fact that a party is a creditor is not enough. He must be a creditor with a specific right or equity in the property and this is the foundation of the jurisdiction in chancery, because jurisdiction on account of the alleged fraud of the debtor does not attach as against the immediate parties to the impugned transfer, except in aid of the legal right."

And the jurisdiction is there denied because no lien lien was created or attached until the issue of process on the bill then filed, and, as said by the Chief Justice, if the legislature could, by creating a jurisdiction in the equity courts in a case like that, deprive a party of a trial by jury, they might with equal propriety do so in any other case, and thus in effect destroy trials by jury in cases purely of common law jurisdiction.

National Tube Works vs. Ballou was a bill filed by a creditor of a Connecticut corporation in the United States Circuit

Court in New York, against a stockholder to obtain satisfaction of his debt. The complainant had secured judgment against the corporation in Connecticut and execution had there been returned unsatisfied, but he had no judgment in New York. The corporation, against which the debt was claimed, was not a party to the suit. It was held that the bill would not lie. MR. JUSTICE BLATCHFORD, for the Court, speaking of the bill, says:

"It does not allege any judgment in New York or any effort to obtain one, nor does it aver that it is impossible to obtain one. It alleges merely that the corporation has no fund or assets wherewith to pay the claim of the plaintiff."

Swan Land and Cattle Company vs. Frank was a bill filed in the Circuit Court of Illinois by the appellant against the stockholders of certain Wyoming corporations, to obtain satisfaction of a claim for unliquidated damages for certain torts, against these several corporations, and seeking to charge the stockholders individually on allegations that they had unlawfully received certain assets of the several corporations against which the damages were claimed.

The corporations, on account of whose fraud the alleged claims existed, were not made parties to the bill, nor were the claims of the complainant ever reduced to judgment. On demurrer, the bill was dismissed for want of jurisdiction. The opinion of the Court below (39 Fed. Rep., 456, 460) shows that there was provision made by the statutes of Wyoming for procuring judgment there against the offending corporations and no sufficient reason was shown why this was not done.

The affirmance of the decree of the Circuit Court might be safely rested on the ground of demurrer that indispensable parties were not before the Court, but this Court also held that the failure to reduce the claim to judgment was fatal.

MR. JUSTICE JACKSON, on this point, speaking for the Court, says:

"Until reduced to judgment at law, it could not be made the basis of relief in equity. This is well settled by the decisions of the Court in *Taylor vs. Bowker*, 111 U. S., 110; *Tube Works vs. Ballou*, 146 U. S., and *Scott vs. Neeley*, 140 U. S., 115. In this latter case the subject is fully reviewed, and the question settled so far as the federal courts are concerned."

It is to be observed that *Tube Works vs. Ballou* and *Swan Land Company vs. Frank*, were cases filed against stockholders to subject them individually for unascertained debts of corporations. In neither case was the corporation, against which the debt was claimed, a party to the bill, nor had the claims which were sought to be enforced ever been determined by a judgment against the corporation. It seems clear that neither bill could lie, for on the face of the record no debt existed against the corporation which would conclude a stockholder, and with the parties then before the Court, there was no way to ascertain them.

In *Scott vs. Neeley* and *Cates vs. Allen*, it is conceded that no lien or equity on the property sought to be subjected existed, except from the filing of the bills. The lien sought to be enforced was created by the proceedings instituted to enforce it.

The distinction between all these cases and the one at bar, in my judgment, rests on the following propositions which are sustained by the highest authority:

1. The capital stock and assets of a corporation constitute a trust fund pledged for the benefit of creditors, which neither the officers nor stockholders can divert or waste.—2 Story Eq. Jur., § 1252; *Wood vs. Dummer*, 3 Mason, 308; *Sawyer vs. Hoag*, 17 Wall., 610; *Sanger vs. Upton*, 91 U. S., 60;

Upton vs. Tribilcock, 91 U. S., 47; *Scovill vs. Thayer*, 105 U. S., 150; 2 Mor. on Corp., § 780 *et seq.*

This principle, which was first declared in *Wood vs. Dummer, supra*, has long been recognized in this State, as elsewhere, and repeatedly affirmed.—*Bank of St. Mary's vs. St. John*, 25 Ala., 610; *Smith vs. Huckabee*, 53 Ala., 191; *Montgomery, etc., R. R. vs. Branch*, 59 Ala. 539; *Elyton Land Co. vs. Birmingham Co.*, 92 Ala., 407.

2. Following this principle, the lien of creditors on this trust fund is recognized in equity and the authorities are numerous that a corporate creditor, without judgment, may come into a court of equity, upon the insolvency or dissolution of the corporation, to protect this trust fund, thus pledged, from waste or diversion and enforce his lien.—2 Mor. on Corp., §§ 797, 798; 2 Story Eq., § 1252*a*; Perry on Trusts, § 242; *Bank of St. Mary's vs. St. John*, 25 Ala., 566, 618; *Conro vs. Gray*, 4 How. Pr., 166; *Coal Mining Co. vs. Edwards*, 103 Ill., 472; *Evans vs. Coventry*, 1 DeG. M. & G., 910; *Kearns vs. Leaf*, 1 H. & M., 707; *Re State Fire Ins. Co.*, I H. & M., 466; *Sanger vs. Upton*, 91 U. S., 60; Beach on Receivers, 416.

Dr. Pomeroy, speaking of the legal status of the property of corporations and partnerships after dissolution or insolvency, says "that such property is a fund sacredly set aside for the payment of partnership or corporation creditors, before it can be appropriated to the use of the individual partners or corporators, and that the creditors have a lien upon it for their own security, but," he adds, "it is plain that no constructive trust can arise unless the directors have placed the assets beyond the reach of creditors through ordinary legal means."—2 Pom. Eq., 1046; 2 Mor. Corp., § 799.

The section from Pomeroy is quoted at length on page 9 of brief for appellees.

This trust and the lien of creditors is expressly recognized and declared in *Sanger vs. Upton, supra.* The case of *Bank of St. Mary's vs. St. John, supra,* decided in 1854, is instructive. That was a bill filed by a creditor at large to subject the assets of an insolvent corporation and to recover from certain directors, corporate assets alleged to have been wrongfully appropriated by them. There was then in force in Alabama an act passed in 1846, authorizing creditors, without obtaining judgment, to proceed in equity to subject property fraudulently conveyed, but the Court, in delivering the opinion in that case, do not rest the right of plaintiff on the statute, but assert it on independent grounds. "It is also clear," says the Court, p. 619, "that as to the creditors, these directors and agents are trustees, and as such liable to account with them for such sums as may have been lost by their mismanagement, or misapplied by themselves; and in this respect the Chancery Court may afford relief independent of the act of 1846." To the same effect, Taylor on Corp., § 654 *et seq.*

3. This right of the creditors at large of a corporation to proceed in equity is in strict analogy to the right of a creditor of a partnership, and is based upon the same principle of equity. Mr. Morawetz, after declaring the rule as stated in reference to corporate creditors, says: "Similar equitable relief will for the same reasons be granted to creditors of a limited partnership, or of a joint stock company whose capital has been equitably pledged as a fund for the security of creditors."—2 Mor. on Corp., § 798. And for this proposition the learned author cites the opinion of CHANCELLOR WALWORTH in *Innes vs. Lansing*, 7 Paige Ch., 783, which was the case of a

limited partnership. In *Holt vs. Bancroft*, 30 Ala., 193, 204, the right of a partnership creditor to come into equity without first exhausting his legal remedies is expressly decided. In *Case vs. Beauregard*, 101 U. S., 688, a creditor at large of a partnership filed a bill to subject firm assets to his debt; on the hearing his bill was dismissed. He then filed a second bill for the same cause of action, alleging, in addition to the matters set forth in the former bill, the recovery of a judgment, the issue of an execution and return of *nulla bona*. It was held that the former decree was as *res adjudicata* a bar to the second suit. The case necessarily involved the determination of the question whether on the first bill the creditor could have had relief or not, and the Court sustained the proposition that he could. In the opinion of the Court, Mr. Justice Strong discusses learnedly and at length the reason of the rule requiring the creditors to exhaust their legal remedies before seeking the aid of a court of equity. He says, p. 690:

"But, after all, the judgment and fruitless execution are only evidence that his legal remedies have been exhausted, or that he is without remedy at law. They are not the only possible means of proof. The necessity of resort to a court of equity may be made otherwise to appear. Accordingly, the rule, though general, is not without many exceptions. Neither law nor equity requires a meaningless form, '*Bona sed impossibilia non cogit lex.*' It has been decided that where it appears by the bill that the debtor is insolvent, and that the issuing of an execution would be of no practical utility, the issue of an execution is not a necessary prerequisite to equitable interference.—*Turner vs. Adams*, 46 Mo., 95; *Postlewait, Creagin & Kelley vs. Howe*, 2 Iowa, 365; *Ticonic Bank vs. Harvey*, 16 Id. 141; *Bosford vs. Biers*, 11 Conn., 369; *Payne vs. Sheldon*, 63 Barb. (N. Y.), 161. This is certainly true where the creditor has a lien or trust in his favor."

Again, says the Court, p. 691:

"But, without pursuing this subject farther, it may be said that whenever a creditor has a trust in his favor, or a lien upon the property for debt due him, he may go into equity without exhausting legal processes or remedies, citing *Tappen vs. Evans*, 11 N. H., 311; *Holt vs. Bancroft*, 30 Ala., 193. Indeed, in those cases in which it has been held that obtaining a judgment and issuing an execution is necessary before a court of equity can be asked to set aside fraudulent dispositions of a debtor's property, the reason given is that a general creditor has no lien. And when such bills have been sustained without a judgment at law, it has been to enable the creditor to obtain a lien either by judgment or execution. But when the bill asserts a lien or a trust, and shows it can be made available by aid of a chancellor, it obviously makes a case for his interference."

The trust and lien being established, the jurisdiction of the court of equity to entertain a bill filed by a creditor at large to protect and subject the trust fund follows.

ARGUMENT.

If the facts alleged and proved in the case at bar do not establish the right to invoke the interposition of a court of equity by a creditor at large, it can only be on the ground that the oft reiterated declaration of this Court and the court of last resort of nearly every State in the Union, that the assets of an insolvent corporation constitute a trust fund for creditors, is merely a figure of speech, a word of promise to the ear to be broken to the hope.

The facts alleged and proved here show that the defendant corporation, the Brierfield Coal and Iron Company, was organized in 1882. That the original subscribers and stockholders were to receive for their original subscriptions stock and first mortgage bonds. That stock and bonds were issued according to this original agreement and a mortgage was executed to

secure these bonds to Preston B. Plumb, one of the original subscribers. That the bondholders and stockholders are practically the same persons. That on subscription lists aggregating $750,000, the subscribers have only paid in money or its equivalent, $115,687.63 (former brief, 21–23), though there was issued to the subscribers $480,000 in stock (former brief, pp. 20–21), of which $116,400 was surrendered to company after it became insolvent. The entire amount of the bonds authorized, $500,000, were issued to the stockholders on the basis of ninety cents on the dollar for subscriptions.

The company, after its organization, continued in business until July 29th, 1887, when it had become insolvent, and on this day pnrsuant to the terms of the mortgage the directors authorized, and there was executed and delivered to Mr. Plumb by the corporation, a deed of further assurance, by which it conveyed all of the property acquired since the execution of the mortgage, including all of the unpaid stock subscriptions due to it.

On August 2nd, 1887, Mr. Plumb, the trustee, pursuant to the conditions of the mortgage, demanded possession of the entire property and assets of the corporation, and they were on that day turned over to his agent, John G. Murray, the former secretary of the company, by the board of directors, and since that day the company has done no business of any kind.

On the next day (August 3rd), Mr. Plumb filed a bill in the Circuit Court of the United States, as trustee, asking that Court to take jurisdiction of the trust and have the same administered, and praying for authority to borrow $25,000 on the faith of the trust property to pay wages and preferred claims, this indebtedness to constitute a first lien on the property. Record, pp. 263-4.

During its operations the company created a large floating debt which amounted to $212,735.18 on August 2nd, 1887, including the debts due the complainants, none of which has ever been paid. On August 6th, 1887, authority was given to the Trustee to borrow $25,000, and this was done, and he issued certificates for this sum which with $37,000 additional certificates, afterwards issued, were subsequently declared a first and prior lien on the property. It appears from the record, that Mr. Plumb was a citizen and resident of Kansas and largely indebted on his stock subscriptions and all of the stockholders and bondholders in the corporation, except Thomas J. Peter, who held one share, and John G. Murray, who held six shares, were non-residents of the State of Alabama.

The filing of the bill by Mr. Plumb put the entire assets of the corporation *in gremio legis*, and effectually beyond the reach of every creditor, and of all legal process, and the proof shows that this was the purpose of filing the bill. Testimony of T. J. Peter (Record, p. 181), and the bill on its face shows it.—Record, p. 263.

This being the condition of affairs, the complainants filed their bill on the 28th of October, 1887, as a general creditor's bill, in the same court where Mr. Plumb's bill was pending, alleging the insolvency of the corporation, the fraudulent execution and issue of the bonds and mortgage, and that the bonds were held by stockholders who were non-residents and were indebted on their stock subscriptions and that the bill filed by Mr. Plumb was a part of the scheme to defraud the company's creditors; it was also shown that the company had turned over its entire assets of all kinds to Mr. Plumb and was unable to carry on its business. The prayer of the bill was for an injunction to prevent the defendants from carry-

ing out the alleged purpose to defraud the creditors; the appointment of a receiver to collect and preserve the assets of the corporation, an accounting, and for general relief.

II.

The Debts of the Complainants Are Admitted.

The first section of the answer of the corporation is as follows:

"That this defendant neither admits nor denies that it is indebted to the complainants in the amounts as alleged in said bill of complaint, but believes such indebtedness to be as therein set forth."—Record, p. 180.

These facts were in the knowledge of the defendant and this answer is an admission of their truth.—1 Dan. Ch. Pr., 837, and cases cited Note 4; *Ib.*, 840; *Potter vs. Potter*, 1 Ves. Sen., 274; *Hill vs. Binney*, 6 Ves., 738.

We thus have an admitted indebtedness against the corporation, under the oath of the president, for, though oath to the answers was waived, the answer of the company was sworn to by T. J. Peter, its president.—Record, p. 83.

The debt being admitted, it only remains to be determined whether the creditors could go into equity.

For what purpose is a judgment and execution at law necessary in any case to authorize a party to apply for relief in equity?

First, to show or establish a debt which is the foundation of the suit.

Second, to show that there is no adequate remedy at law; or—

Third, to create a lien which a court of equity will enforce.

An admitted debt will not alone entitle a party to invoke the aid of a court of equity, as all the cases show, but if the debt be admitted, and there is a lien or equity over which a

court of equity exercises jurisdiction, then relief will be afforded, whether there be an exhaustion of legal remedies or not, wherever the bill shows on its face that any proceedings in the law court would necessarily be fruitless, as is said in *Case vs. Beauregard, supra.*

I have been referred to no case which denies the last proposition, and on the other hand this Court has but recently affirmed the principle in the case of *Sheffield Furnace Co. vs. Witherow*, 149 U. S., 574, 578, 579. There the appellee filed a bill in the Circuit Court of the United States in Alabama to enforce a mechanic's lien against certain property of the appellant and it was insisted that the lien being a statutory right, that the remedy prescribed by the statute is the one which must be pursued in the federal courts, but this contention is fully answered in the opinion by MR. JUSTICE BREWER, on the ground that "the foroclosure of a mechanic's lien is essentially an equitable proceeding," citing *Davis vs. Alford*, 94 U. S., 545, 546; *Idaho and Oregon Land Improvement Company vs. Bradbury*, 132 U. S., 509; and the Court there holds that the general original jurisdiction of the federal courts of equity cannot be abridged by State statutes.

Both under the decisions of this Court, and the Supreme Court of Alabama, cited in my former brief, p. 62, the Brierfield Coal and Iron Company, when it turned over its entire assets to the Trustee and deprived itself of the means of performing its corporate functions, was "civilly dead," and the right to a receiver to wind up its affairs arose.—*Buck vs. Piedmont, etc., Ins. Co.*, 4 Fed. Rep., 849, 853.

The principle I contend for is expressly declared by the House of Lords in *Evans vs. Coventry*, 5 DeG. M. & G., 911, and by this Court in *Mellin vs. Moline Iron Works*, 131 U. S., 352, 367.

The question presented in this last case was whether a decree of the Circuit Court of the United States, on a bill filed by a creditor at large against an insolvent corporation, was void for want of jurisdiction. It was held that the decree was not void, and in answer to the contention that obtaining judgment and issue of execution were essential to the jurisdiction, this Court says that this was a question for the Circuit Court to determine and:

"Besides, the removal of alleged liens or incumbrances on property, the closing up of affairs of insolvent corporations, and the administration and distribution of trust funds, are subjects over which courts of equity have general jurisdiction."

If the record, on which the decree there was obtained, showed on its face a want of jurisdiction, manifestly the Court by its decree could not confer jurisdiction, and hence, the portion of the opinion which I have quoted can in no wise be regarded as dictum.

Sage vs. Memphis etc., Railroad, 125 U. S., 361, 376, is also in strict analogy. There, a bill was filed by Sage, a judgment creditor, asking for the appointment of a receiver. It was objected that the bill failed to show the issue and return of execution unsatisfied. In answer to this objection, Mr. Justice Harlan, delivering the unanimous opinion of the Court, says:

"In the present case, it is true, Sage did not sue out execution upon his judgment and have a return of *nulla bona*. But that point has become immaterial. The railroad company made no such objection at the time the receiver was appointed. Besides, suing out an execution would, according to the facts and the admission of the parties, have been an idle ceremony, causing useless expense, and bringing no real benefit to the plaintiff."

III.

Objection to the Equity of Bill Must be Taken by Demurrer or is Waived.

In this connection I may also refer to the cases in this Court in which it has been held that objection to the equity of the plaintiff's claim must be taken by demurrer or is waived:

Farley vs. Kittson, 120 U. S., 303, 316.

Rhode Island vs. Massachusetts, 14 Pet., 210, 258, 262.

National Bank vs. Insurance Company, 144 U. S., 54, 76.

And if the objection to the jurisdiction is on the ground that the plaintiff has an adequate remedy at law, it must be taken at the earliest moment, and if the defendant answers and submits to the jurisdiction of the court, it is too late for him to object that the plaintiff has a plain and adequate remedy at law.—*Reynes vs. Dumont*, 130 U. S., 354, 395; *Kilbourn vs. Sunderland*, *Ib.*, 505, 514.

The record shows that the defendants answered the original bill.—Record, pp. 39, 45, 52, 60, 62, 68, 73, 80, 96. All of these answers, with the exception of that of Seney & Thomas, were filed on or before January 3rd, 1888.

On January 14, 1888, the Brierfield Coal and Iron Company, with an answer on file, filed a general demurrer. Record, p. 86, and on February 4, 1888, W. L. Chambers, trustee, who had been brought into this cause on his own motion, also demurred.—Record, p. 87. On May 25, 1888, these demurrers were overruled.

So far as the demurrer of the Brierfield Company was concerned, it might have been stricken from the file on motion, and was properly overruled, and as to the demurrer of W. L. Chambers he was neither a necessary nor proper party in this cause.

If, as I think, the allegations of the bill are fully established by the proof and it is held that the Circuit Court had no jurisdiction, then deplorable indeed is the condition of the appellants.

The corporation is indebted to them for their goods and merchandise contributed to the enterprise in good faith. In order to make themselves safe against all loss, the persons controlling the corporation devised the scheme of issuing to themselves bonds, and securing the same by a mortgage to one of their own number. The creditors were ignorant of the true condition of affairs, until after the collapse of the enterprise.

Before any steps could be taken by creditors, the directors delivered to Mr. Plumb a conveyance of all the corporate property in trust for the stockholders, and four days thereafter delivered possession of all the property conveyed, pursuant to the deed of trust. Mr. Plumb on the next day puts himself and the property within the protecting arm of the federal court, where he can with the aid of the court quietly and safely encumber the property at pleasure with debts and liens to discharge obligations and liabilities of the corporation which existed, only because he and his fellow stockholders failed to pay their stock subscriptions, and creditors are powerless to prevent it, until the entire assets are squandered, while they are procuring judgments.

Within six months after the bill was filed, Mr. Plumb and Mr. Chambers, his successor, issued $52,000 of trustee's certificates, and on May 15th, 1888, Mr. Chambers issued $10,000 more, and these certificates were by the decree in the cause begun by Mr. Plumb declared to be a first and paramount lien on the trust property. Can it be that a corporate creditor was bound to wait until the entire fund was absorbed by the trustee or stockholders, before he could take any steps to pro-

tect it, when all the authorities hold that it was pledged for his debt, and that in a court of equity he was entitled to a lien upon it?

Was the creditor bound to resort to the courts of law to establish an admitted demand, while his trustee disposed of the property which was pledged to secure this same demand?

It seems to me that each of these questions must be answered in the negative, and if I am correct as to either, then the jurisdiction is established.

IV.

The Court had Jurisdiction by Reason of Having the Custody of the Property.

But the jurisdiction may be rested on another principle.

The federal court took the entire property of the corporation into its custody by taking jurisdiction of the bill filed by Mr. Plumb as trustee, to administer the trust, and Mr. Plumb and his successor, Mr. Chambers, held the entire assets of the corporation as officers of the Court.

A creditor at large had the right to assail the mortgage and bonds as fraudulent under the statutes of Alabama in the courts of that State, and had the right to have a receiver appointed to take charge of the property of the corporation. The statute is as follows:

"A creditor without a lien may file a bill in chancery to discover or to subject to the payment of his debt any property which has been fraudulently transferred or conveyed, or attempted to be fraudulently transferred or conveyed by his debtor."—Code of Alabama 1886, Sec. 3544.

Weis vs. Goetter, 72 Ala., 259.

Manifestly this remedy was not open in the State court, for the *res* was in the possession of the federal court, and no steps could be taken which would disturb the possession of the trustees, but the creditors could come into the federal

court and there assert their claims against the property, under the well settled ancillary jurisdiction of the Court, arising from the possession and control of the property.

The jurisdiction invoked is expressly recognized in *Morgan's Co. vs. Texas Central Railway*, 137 U. S., 171, 201, 202, where it is said of a bill filed by a defendant seeking to have a lien declared on property in the hands of a receiver of the Court, superior to the lien set up by the original bill:

"This bill was filed, on leave, before the testimony was taken, and though there should be as little delay as possible in filing bills of this kind, yet that was a matter entirely within the discretion of the Court, which could have directed it to be filed even at the hearing. And whether this bill be regarded as a pure cross-bill, as an original bill in the nature of a cross-bill, or as an original bill, there is no error calling for the disturbance of the decree because the Court proceeded upon it in connection with the other pleadings. The jurisdiction of the Circuit Court did not depend upon the citizenship of the parties, but on the subject of the matter of the litigation. The property was in the actual possession of that court, and this drew to it the right to decide upon the conflicting claims to its ultimate possession and control.—*Minnesota Co. vs. St. Paul Co.*, 2 Wall., 669; *People's Bank vs. Calhoun*, 102 U. S., 256; *Krippendorf vs. Hyde*, 110 U. S., 276."

In *Byers vs. McAuley*, 149 U. S., 608, 618, 619, Mr. Justice Brewer thus states the rule, in the opinion of the Court:

"It is true that when the federal court takes property into its custody, as it does sometimes by a receiver, it may entertain jurisdiction of claims against that property in favor of citizens of the same State as the receiver, or either of the parties. But that is an ancillary jurisdiction; it is in aid of that which it has acquired by virtue of the seizure of the property, and in order, it having possession, that it may make final disposition of the property. Possession of the *res* draws to the court having possession all controversies concerning the *res*. If original jurisdiction of the administration of the estates of deceased persons were in the federal court, it might by instituting such an administration and taking possession of the estate, through an administrator appointed by it, draw to

itself all controversies affecting that estate, irrespective of the citizenship of the respective parties. But it has no original jurisdiction in respect to the administration of a deceased person. It did not in this case assume to take possession of the estate in the first instance, and it cannot, by entertaining jurisdiction of a suit against the administrator, draw to itself the full possession of the estate, or the power of determining all claims against or to it."

The property was not attempted to be brought into the custody of the federal court by the bill of the appellants; it was there when their bill was filed, and they only asked the court having the custody of this property, to pass on their claims to it.

The Circuit Court of the United States having the custody of the property was the only tribunal which could adjudicate these claims and grant any relief against the property, and protect it from waste by the directors and stockholders in the case of Plumb, trustee, then pending.

The relief sought by appellants could only be had by original bill, and as here the *res* was in the custody of the Court this bill must be taken as an original bill in the nature of a cross-bill, which the Court had jurisdiction to entertain by reason of the custody of the subject-matter.

It may be argued that the Supreme Court of Alabama has determined that the creditors might have proceeded in the State court.—*Gay, Hardie & Co. vs. Brierfield Coal and Iron Co.*, 94 Ala., 303.

Concede to this decision all that may be properly claimed for it, it is clear that the Court in that case very properly held that the State court could not do anything which would affect the control or possession of the federal court over the property; meanwhile, the defendants could so encumber and waste the estate as to destroy it, because, as I have shown in my former brief, the certificates of indebtedness issued by

the trustees were authorized to be issued without notice, and in the only case where proof was offered to sustain the petition of the trustee, it was furnished by the affidavits of T. J. Peter and John G. Murray, the president and secretary of the Brierfield Coal and Iron Company.—Record, pp. 350, 353. The bill in the case at bar was to subject the *res* and a receiver was asked for.

The necessity for prompt action in the federal court on the part of the unsecured creditors is made manifest by the report of the Special Master sent up in the return to the *certiorari*:

Mr. Plumb realized from the assets of the corporation		$ 96,853.91
Of which he paid to his successor, Mr. Chambers	$8,352.92	
And Mr. Chambers realized from like sources in addition		245,220.33
A total of		$342,074.24
Of which sum there was from money borrowed		58,582.12
Leaving amount derived from assets of the corporation		$283,492.12

Report of Special Master shown in return to *certiorari*, pp. 20, 21, 22.

V.

Appellants Could Not Have Been Made Defendants in in the Suit of the Trustee.

The creditors were invited to come into the case instituted by Mr. Plumb and make themselves defendants that their claims might be adjudicated there (Record, p. 263). And in the answers to the amended bill, which was afterwards stricken out, the several defendants rely upon the decree in the Plumb-Chambers case as a bar to the bill of appellants. See answers to amended bill.—Record, p. 134.

It seems to me clear on the authorities that the appellants, claiming adversely to the mortgage could not properly be made parties to that suit which was a bill to foreclose the mortgage.

"It is the settled law of this Court," says MR. JUSTICE SWAYNE, delivering the opinion of this Court, in *Peters vs. Bowman*, 98 U. S., 56, 59, 60, "that upon a bill of foreclosure, or, as in this case, a bill to enforce a lien for the purchase money, and where there has been no fraud and no eviction, actual or constructive, the vendee, or a party in possession under him, cannot controvert the title of the vendor; and that no one claiming an adverse title can be permitted to bring it forward, and have it settled in that suit. Such a bill would be multifarious, and there would be a misjoinder of parties. *Noonan vs. Lee, supra; Dial vs. Reynolds*, 96 U. S., 340."

Hambrick vs Russell, 86 Ala., 199.

1 Daniel Ch. Pr., 277 n. 2, 339 n. 2.

2 Jones on Mort., § 1589.

Stout vs. Lye, 103 U. S., 66, does not conflict with this rule, for it is there held simply, that the purchaser of a mortgagor's interest, pending proceedings to foreclose, is bound by the decree of foreclosure.

This cause was set down for hearing on Tuesday, July 2nd,

1889, and on that day appellants asked and were granted leave to file the amended bill, when the defendants asked for time to examine the amended bill and the hearing was set down for July 15th, 1889.—Record, p. 123.

On July 18th, 1889, the amended bill was stricken from the file.—Record, p. 148.

On July 19th, the cause was finally submitted for decree Record, p. 251.

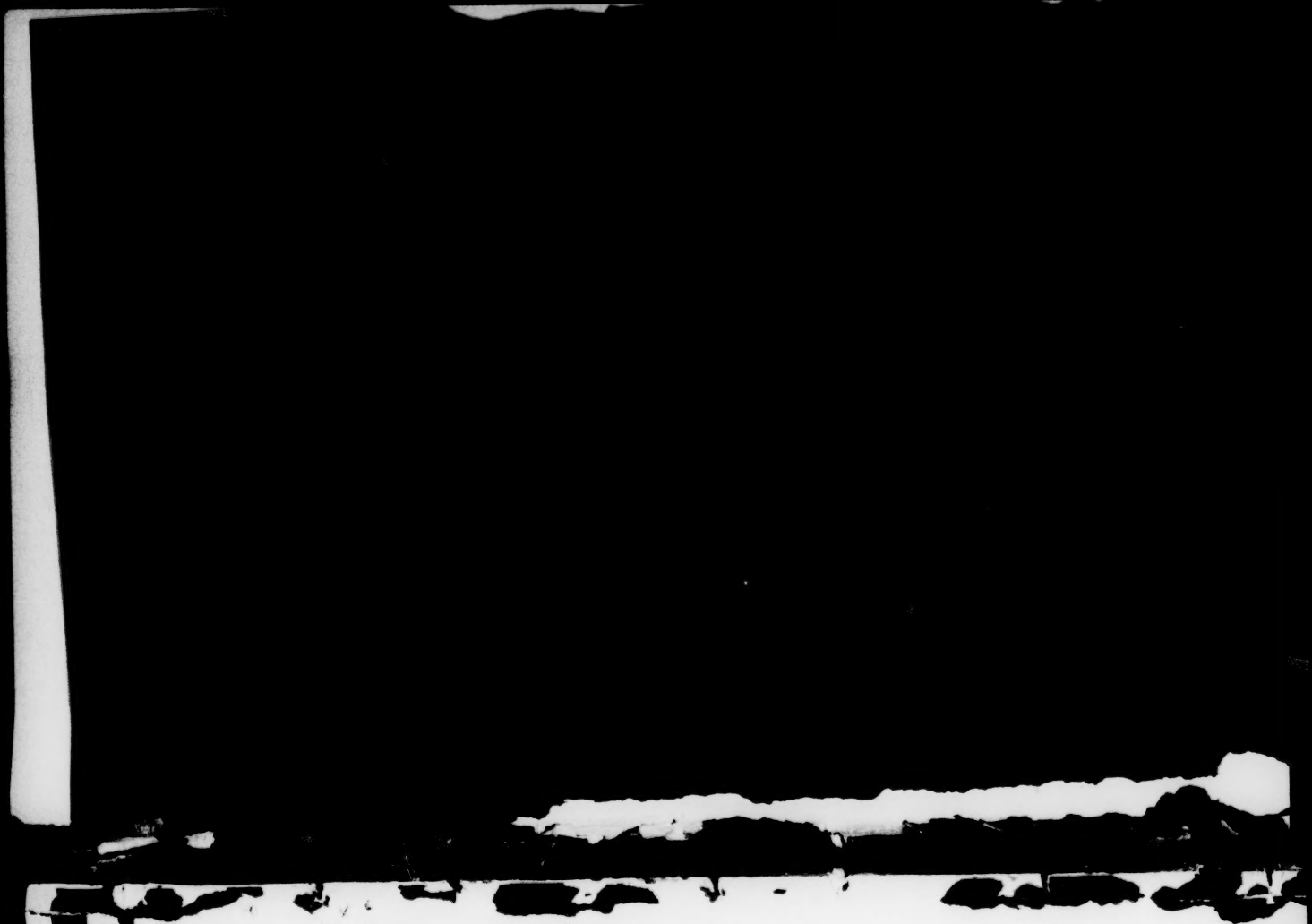
On July 3rd 1889, after this cause was submitted, No. 103, the case of *W. L. Chambers vs. the rierfield Coal and Iron Co.* was submitted, as appears from the Note of Testimony, Record, pp. 403, 404; and on July 8th, 1889, before this cause at bar could be heard, a final decree was rendered in the Chambers case (Record, pp. 581, 594). As I have shown, this decree, some of the defendants, set up as a bar to this suit by their amended answers.

A casual examination of the record in the case of *W. L. Chambers, Trustee, vs. rierfield Coal and Iron Co.* will disclose the fact that there was never any real controversy in that case; that the suit was in fact friendly throughout, its purpose being, as declared on its face, to prevent vexatious, annoying and expensive litigation with the creditors of the corporation, and to secure a decree, the effect of which is to turn over to the stockholders as bondholders, who paid nothing for their bonds, or if they can be held to have paid for their bonds were largely indebted for their stock subscriptions, the entire assets of the corporation discharged of all liability for the two hundred thousand dollars of debts admitted to be due to the unsecured creditors

Respectfully submitted,

ALEX. T. LONDON,

Attorney for Appellants.



In the Supreme Court of the United States.

No. 223. October Term, 1892.

R. S. HOLLINS ET AL.

vs.

THE BRIERFIELD COAL AND IRON COMPANY ET AL.

Brief of The Brierfield Coal and Iron Company and Thomas J. Peter of Appellees.

The Brierfield Coal and Iron Company was duly incorporated under the laws of Alabama, May 4, 1882. Capital stock, $750,000, in shares of $100 each. (Rec., pp. 550–556.)

$375,000 of the stock was subscribed, the names of the subscribers being signed by T. J. Peter, under authority from them, except Huckabee and McCalley, who subscribed for themselves. (R., 164, 165). Subsequently, T. J. Peter, in order to avoid any question as to his authority to sign the names of the subscribers, had a second subscription made by the same parties, signed by themselves, for the same amounts, as of the date of the original subscription, May 4, 1882. (R., 166, 558.)

July 1, 1882, notice of a meeting of stockholders on August 25, 1882, was authorized and duly published. The stockholders met August 25, 1882, and adjourned until September 1, 1882, when they met. The mortgage to Preston B. Plumb, trustee, was read, considered and approved,

and its execution authorized by the *unanimous vote of the stockholders.* (R., 559, 560.) All were present in person or by proxy. (R., 153.)

The original agreement with the subscribers was that for every $900 paid in they were to receive a $1,000 mortgage bond, and a like amount of stock. (R., 558.)

The mortgage to Preston B. Plumb, securing $500,000 of bonds of the Company, was executed September 1, 1882, and duly recorded. This mortgage included all the real and personal property then owned by the Company, and all that it might thereafter acquire. (R., 11.) It also contained a covenant for further assurance. (R., 14.)

The bonds of the Company were sold at 90 per cent., and paid for. (R., 179.) The testimony of John G. Murray (R., pp. 408, 409, 410) shows the numbers of all bonds issued, to whom issued, and that the Company received 90 per cent. in cash for them; and (p. 411) that every dollar of every loan to the Company went into the property; that between $700,000 and $800,000 in cash was put into the property.

It was discovered that the original plan of subscription for bonds and stock, whereby the purchase of a $1,000 bond at 90 cents carried with it the right to stock also, was unauthorized by law (R., 245); and in July, 1884, a call upon the stockholders for 20 per cent. was made, followed by two other calls, April, 1885, for 7, and January, 1886, 30 per cent., making 57 per cent. in all. The testimony (R., 406) shows the names of the respective stockholders and amounts paid; see also the report of the special master (p. 4).

On December 12, 1884, the General Assembly of Alabama passed an act amending and ratifying the charter of the Brierfield Coal and Iron Company. This act enlarged the powers of the Company, authorized an increase of the capital stock as the business of the Company might

demand, and gave it power from time to time to issue bonds for the payment of money borrowed, or for its indebtedness, secured by mortgage or mortgages on its property. (R., 493).

The principal business of the Company was the manufacture of iron nails—the plant being capable of producing 600 kegs per day. The steel nail coming into market materially diminished the price of iron nails. The manufacture of the iron nails was continued, in expectation of an advance in price, which did not take place, and resulted in the financial embarrassment of the Company. (R., 180.)

July 25, 1887, Preston B. Plumb, trustee under the mortgage, requested of the Company a further conveyance and assurance, pursuant to the covenant in the deed to him, which was executed by the Company, July 29, 1887. (R., pp. 9–27). August 1, 1887, Mr. Plumb demanded the surrender of possession of all the property of the Company to him, as trustee, which was done, and he placed John G. Murray in charge, to hold, control, and manage the property.

Bill in Cause No. 103

In the Court Below.

Preston B. Plumb, as trustee, holding the title, and being in possession of the property, thereupon, on August 3, 1887, filed his bill in the court below against the Company, including as defendants certain stockholders, bondholders and banks. (R., 253.)

This bill details the history of the Company from its organization, and avers (260) that the amount invested in the works and properties of the Company aggregates

$900,000, and that the intrinsic value of the property exceeds $1,000,000. That the chief industry of the Company has been the manufacture of cut nails from iron. That the Company, with the view of changing their industry to the production of pig iron, has purchased valuable fields of cokeing coals and iron ore beds, has erected ovens and railroads connecting their properties, and completed an iron furnace of 50 tons capacity per diem. "Orator is fully satisfied, and so states his belief to be, that said property, employed in the industries now established upon it, in coal, coke and iron production and manufacture, will make money rapidly, and will soon be able to clear off all debts that the Company is owing."

"Orator states it as his belief, and believes that this opinion will be concurred in by all parties concerned in interest, that a sale of the property on foreclosure of the trust conveyance, without a further effort to develop the property so that it will pay all the debts of the Company, would be ill-advised, and necessarily hazardous to all concerned; but orator states that he will not be able, without the active assistance of the court in allowing him to borrow money, on the faith and credit of the property, supported and sustained by the decree of this honorable court, to render the property self-sustaining, or to pay the laborers the sums that are due them, or to realize a sum sufficient to meet the interest on the bonds of the Company, or to pay any part of the unsecured debts of the Company."

"Orator states that the property conveyed to him in trust is capable under proper management, and with its credit restored under the orders of the court, of meeting the current expenses of its management in the manner provided in said deed of trust, and of paying all its debts, and of yielding to the shareholders a substantial profit on their

investment. Orator further states that he is advised and believes that it is necessary to his security in the administration of said trust estate under the third section of said deed and under its other provisions, and also to the secure and proper management of said property, that he should have the ruling and direction of this honorable court, and that it is also necessary that an *account should be stated with each stockholder*, and each bondholder of said company to ascertain what sums of money such stockholders may owe said company, if any, and what sum of principal and interest is due each bondholder secured by said deed of trust, and that they may receive from time to time such rateable and proper allowances on their debts as the court shall direct the trustee to pay over to them. It is also necessary, as orator is advised, that your orator should have the direction of the court in making sales of any lands, if such there are, as shall be found necessary to the proper and profitable conduct of the trust estate; and to these ends, and for other purposes essential to the administration of the trust, and to prevent a forced sale of the trust estate while it is capable of living, made adequate to the payment of all its indebtedness, and to prevent unnecessary and vexatious litigation, orator states that it is necessary that this honorable court will take jurisdiction and control of said trust estate and of its management and administration, and to protect and preserve the same from time to time by such orders and decrees as may be found necessary and lawful."

Among the prayers of the bill were the following (R. 263): "That if any of the creditors of said Brierfield Coal and Iron Company who are not made parties defendant to this bill, or any persons holding and asserting claims against the trust estate in the hands of orator, desire to have their rights determined in this honorable court that they be permitted to make themselves parties defendant in this cause

on filing their petition therein setting forth their said debts, demands and claims, and that said matters shall be heard and determined in this cause. Orator further prays that *an account be taken and stated between the said Brierfield Coal and Iron Company and each stockholder* and bondholder thereof to show what sums, if any, are due and payable to each of them out of any moneys that may come into the hands of orator derived from such property and subject to distribution."

The court did take jurisdiction of the trust, authorized the borrowing of money on trustees' certificates, and the operations of the Company were continued, the trustee reporting and accounting to the court. Pending this suit, Mr. Plumb resigned as trustee, and William L. Chambers was, by order of court passed Nov. 21, 1887, appointed trustee in his place. (R., 337.)

Mr. Chambers continued to conduct the business of the Company, and his accounts were reported to and acted upon by the court, all of which is set out in the report of the special master. The result of this cause was that on July 8, 1889, the court passed a decree adjudicating all questions involved, including the matter of unpaid subscriptions on stock, and directed a sale of the property. (R., 581).

The Bill in this Cause

No. 107 in the Court Below.

Under these circumstances, the appellants, complainants below, being two of the simple contract creditors of the Company, whose claims, contracted in 1886 and 1887, aggregate about $15,000, filed their bill on October 28, 1887. The bill avers that the $500,000 of bonds were distributed among the stockholders without any consideration;

that the bonds and mortgages are fraudulent and void; that the stockholders are indebted to the Company for the amount of their subscriptions to the stock; that if orators are mistaken as to the bonds and mortgages being void, the property conveyed to Plumb as trustee will not realize sufficient to pay the outstanding bonds, and in that event the only assets available for payment of creditors would be the unpaid subscriptions to stock; and that the mortgage is void because the provisions of the law of Alabama were not complied with in respect of publication of notice, and that two-thirds in value of the stockholders did not authorize it. It refers to the bill filed by Preston B. Plumb, trustee; avers that the Company, since the first day of August, 1887, "has ceased to carry on or exercise its corporate functions, and by the conveyance and surrender of its property and effects, has wholly disabled itself from carrying on or performing its corporate functions."

The sole equity of the bill in respect of any averment of fraud, exclusive of the distribution of the bonds without consideration, is the following (R., foot of page 4): "And orators aver that they verily believe that the said Preston B. Plumb, for the purpose of hindering, delaying and defrauding orators and the other creditors of said corporation, took possession of said property and effects by his said agent, and filed the said bill in this honorable court."

The bill prayed, *inter alia*, "Or if it shall appear that the bonds of said Brierfield Coal and Iron Company were issued for any consideration, that the said mortgages or deeds of trust are a lien or charge upon the property and effects of said Brierfield Coal and Iron Company only to the extent of the sums actually advanced upon or paid for said bonds." (R., 8.)

The answers of the defendants denied all the material averments of the bill. The Company, T. J. Peter, J. G. Murray, and W. L. Chambers, trustee, also demurred to the bill. (R., 86, 87.)

THE FACTS.

Complainants not only failed to prove the material averments of the bill, but they were proved not to be true.

As already shown, it was proved that the bonds were sold for 90 cents on the dollar, not only full value but more than they were worth; that calls for payments on stock subscriptions, aggregating 57 per cent., were made and largely paid; that several of the stockholders paid the amount of their subscriptions in full, notably Mrs. Esther A. Peter, who subscribed and paid $50,000 in cash (Report of Special Master, p. 4); that in the final decree in No. 103 all the subscribers were made to pay in full; that the mortgage was authorized by the unanimous vote of all the stockholders; that about $800,000 had been put in the property; and that the bill in No. 103 was filed not for the purpose of defrauding anybody, but on the advice of Senator Morgan, for the purpose of protecting the interests of all concerned, bondholders, stockholders and creditors, and in the honest belief that, with the aid of the court in the administration of the trust, the Company would succeed in the new branch of industry it had undertaken, pay its debts, and be enabled to continue its business. (R., 181, 185, 260.)

ARGUMENT.

Under the real facts as they appear in proof in this case, can simple contract creditors, who have not exhausted their remedy at law against the corporation, file a bill in equity to subject its property and unpaid stock subscriptions to the payment of their debts. We claim that they cannot. It is true that in equity, unpaid stock subscriptions are regarded as a trust fund for the payment of debts; they are debts due by the stockholder, however, not to the creditor, but to the corporation: they are equitable assets, to be reached in

equity like all other equitable assets of the real debtor, by a judgment at law against the debtor and the return of execution unsatisfied. It is not a matter of evidence but of jurisdiction.

2 Pom. Eq. Jur., Sec. 1046, states the principle as follows:

"There are certain relations which are often spoken of as trusts, and as constituting a species of constructive trusts, but which are not in any true and complete sense, trusts, and can only be called so by way of analogy or metaphor. Courts regard partnership property, after an insolvency or dissolution of the firm, and in the proceeding for winding up its affairs, as a trust fund for the benefit of firm creditors; and the capital stock and other property of private corporations, especially after their dissolution, is treated as a trust fund for the payment of creditors. These statements may be sufficiently accurate as strong modes of expressing the doctrine that such property is a fund sacredly set apart for the payment of partnership and corporation creditors, before it can be appropriated to the use of the individual partners or creditors, and that the creditors have a lien upon it for their own security; but it is plain that no constructive trust can arise in favor of the creditors unless the partners or directors, through fraud or a breach of fiduciary duty, wrongfully appropriate the property and acquire the legal title to it in their own names, and thus place it beyond the reach of creditors through ordinary legal means." See also 3 Pom. Eq., Sec. 1415 and note.

This court held in Scott *vs.* Neely, 140 U. S., 106, that the Circuit Court in Mississippi had no jurisdiction on a bill by simple contract creditor to subject property of debtor to payment, in advance of any proceeding at law, *even though the statute of the State authorized it*, not only because the defendant has a constitutional right of trial by jury, but also because of the prohibition of the act of Congress to pursue his remedy in a court of equity.

99 U. S., 398, Smith *vs.* Railroad Co.

This was a bill in equity by simple contract creditor against the railroad company and the county, alleging that the railroad company was insolvent and was entitled to certain county bonds, which it seeks to have applied to payment of complainant's debt. Held, that such claim must be preceded by judgment at law, and the decree sustaining demurrer to the bill was affirmed.

57 N. Y., 587, Bartlett *vs.* Drew.

Where the property of a corporation has been divided among stockholders before its debts have been paid, a judgment creditor, after the return of an execution unsatisfied, may maintain an action in the nature of a creditor's bill against a stockholder to reach whatever was received by him.

76 N. Y., 9, Hastings *vs.* Drew, and
101 Mass., 562, Lyman *vs.* Bowney, are to the same effect.

2 Mor. on Corp., Sec. 779, states the rule as follows:

"Creditors of a corporation have the same right as creditors of an individual to enforce their claims against the property of their debtor. They may subject any legal or equitable assets belonging to the corporation to the payment of their claims." "The obligations assumed by a shareholder to contribute the amount of his shares, as capital for the common benefit, is regarded as assets belonging to the Association as an entity. *Creditors can obtain the benefit of this obligation only after having established their claims by judgment against the corporation.*"

Id., Sec. 782:

"Usually, therefore, the court will not interfere with the management of a corporation at the suit of a mere creditor, unless he is threatened with irreparable loss through the fraudulent destruction of his security and the insolvency of the wrongdoers."

Id., Sec. 786:

Insolvency does not destroy the power of management. A corporation is authorized to continue the management of its affairs, notwithstanding its actual insolvency, so long as there is an honest intention and a reasonable expectation on the part of the company of redeeming its fortunes; and it is only where a corporation is about to defraud its creditors by waste of its assets, or when the insolvency of the company is hopeless, so that further prosecution of the enterprise would clearly be at the expense of the creditors, that the latter may interfere to protect their lien.

The authorities cited on page 59 of the appellant's brief to justify the maintenance of the bill in a case of this kind by a creditor at large, do not sustain the proposition. Of the cases cited in this court, Sanger *vs.* Upton, 91 U. S., 60, was a suit by an assignee in bankruptcy. Terry *vs.* Tubman, 92 U. S., 156, was an action at law.

Terry *vs.* Anderson, 95 U. S., 628, was a bill filed by holders of bills of the bank against the assignees and stockholders of the bank. The principal question was as to the Statute of Limitations. The assignees had filed a bill for the proper administration of their trust. This court held that the Statute of Limitations did apply. In the opinion the court alludes to the fact that neither of the complainants are judgment creditors of the bank. On denying a petition for rehearing the court held that the balance due on unpaid subscriptions for stock passed to the assignees of the bank under the assignment of "all the property, estate, credits and assets of the bank," and that therefore there was a trustee invested with ample powers to collect and dispose of all the assets belonging to the alleged trust fund. And the court (p. 637) says: "If there are assets which the trustee did not reach, the appellants are remitted to their remedies, *after judgment against the bank*, to subject equitable

assets to the payment of their demands. We have seen in the former opinion filed, that they do not now occupy the position of judgment creditors."

Meller *vs.* Moline Iron Works, 131 U. S., 152.

This was a bill filed impeaching the decree of the U. S. Circuit Court in another case as void for want of jurisdiction, because, 1st, the case was not such as authorized the court to proceed against a non-resident defendant under the Act of March 3, 1875, and 2d, because the complainant was a creditor at large who had not exhausted its legal remedies by judgment and execution. This court held, 1st, that the case did come under the Act of March 3, 1875, and 2d, that was one of the questions necessary to be determined and any error in deciding it would not authorize even the same court in an original, independent suit, to treat the decree as void. Upon suggestions that the court proceeded in the suit upon the theory that it was maintainable under the provisions of a certain Illinois statute, the court said (p 367): "In the view we take of the case, it is not necessary to determine the soundness of any of these propositions; for if the court erroneously ruled upon any of these, its decree could not for that reason be assailed in a collateral proceeding as void for want of jurisdiction. An adjudication that a particular case is of equitable cognizance, cannot be disturbed by an original suit. Such adjudication is not void even if erroneous."

All the cases in this court, except suits by assignees holding the title, are bills filed by judgment creditors upon return of executions unsatisfied. See

22 How., 380, Ogilvie *vs.* Knox Ins. Co.
11 Wall., 96, New Albany *vs.* Burke.
16 Wall., 390, Burke *vs.* Smith.
101 U. S., 205, Hatch *vs.* Dana.

The syllabus of this case states, "Creditors of an incorporated company who have exhausted

their remedy at law may proceed in equity against a stockholder to enforce his liability to the Company for amount remaining due upon his unpaid subscription."

111 U. S., 110, Taylor *vs.* Bowker.

In this case, notwithstanding the statute of Maine enacted that when a corporation has unlawfully divided its property, or has property which cannot be attached, any judgment creditor may file a bill in equity for the purpose of procuring a decree that the property be paid to him in satisfaction of his judgment, this court held that the right of action thus conferred, being an equitable right, does not accrue until the issue of execution on the judgment and its return unsatisfied.

131 U. S., 334, Hawkins *vs.* Glenn:

In its opinion, the court says: "Constituting, as unpaid subscriptions do, a fund for the payment of corporate debts, when a creditor has exhausted his legal remedies against the corporation which fails to make an assessment, he may, by bill in equity or other appropriate means, subject such subscriptions to the satisfaction of his judgment, and the stockholder cannot then object that no call had been made."

139 U. S., 96, Clark *vs.* Bever.
139 U. S., 118, Fogg *vs.* Blair.
139 U. S., 417, Handley *vs.* Stutz.
146 U. S., 517, National Tube Works Co. *vs.* Ballou.

The complainant in this case, having recovered a judgment against a Connecticut corporation in a court of that State, on which execution had issued and then been returned unsatisfied, filed his bill in

the United States Circuit Court for the Southern District of New York, to compel the defendant to pay what he owed on his subscription to shares of stock in the Connecticut corporation; held, that the bill was defective in not alleging any judgment in New York against the corporation, or any effort to obtain one, or that it was impossible to obtain one. In its opinion the court says: "Where it is sought by equitable process to reach equitable interests of a debtor, the bill, unless otherwise provided by statute, must set forth a judgment in the jurisdiction where the suit in equity is brought, the issuing of an execution thereon, and its return unsatisfied, or must make allegations showing that it is impossible to obtain such a judgment in any court within such jurisdiction." Citing *inter alia*, Terry *vs.* Anderson, Smith *vs.* RR. Co., and Hawkins *vs.* Glenn, *supra.*

AMENDED BILL.

When this case was for hearing below, the court permitted complainants to file the amended bill, July 5, 1889, as upon the hearing, and postponed the hearing until July 15, 1889. (R., 123.) Many of the defendants answered the amended bill. The cause came on for final hearing on July 19, 1889, on the pleadings and testimony, and on motion to dismiss the bill for want of equity; and on motion of complainants to amend the bill of complaint, which the court denied, and being of the opinion that the proofs failed to establish the case made by the bill, decreed its dismissal. (R., 251.)

It will thus be seen that complainants had the full benefit of their amended bill on the hearing. As the only material amendment in it was in making more specific the

allegations of fraud on the part of Senator Plumb, which they had not only failed to sustain by proof, but which had actually been disproved, the court properly refused to allow it, and dismissed the original bill.

Moreover, complainants in their amended bill, did not make W. L. Chambers, trustee, (the holder of the title to and in possession of all the property) a party defendant. Other of the defendants in their answers set up the objection that he was a necessary party, but was not made such. (R., 125, 129, 132, 140, 142.)

These answers all set up the pendency of cause No. 103. W. L. Chambers, trustee, although not made a party, on July 15, 1889, (R., 134) pleaded in bar the decree passed by the court in cause No. 103 on July 8, 1889. Complainants excepted to these answers and the plea of Chambers (R., 145 *et seq.*), which, upon hearing, the court on July 18, 1889, overruled, held the defendant's objection to the filing of the amended bill well taken, and set aside the order allowing it to be filed. (R., 148.)

Complainants never made W. L. Chambers, trustee, a party to the original bill, notwithstanding the fact that the court, on January 2, 1888, passed an order reciting that Plumb, as trustee, had resigned, and ordered that William L. Chambers, as such trustee, be made party defendant in this cause in the place and stead of said Preston B. Plumb, as trustee.

Complainants took no steps whatever under this order to make Chambers a party. It is true that Chambers answered the bill, but it is submitted, that, while this might estop him from presenting the objection that he was not a party, it would not estop other defendants from so doing, as they subsequently did in their answers to the amended bill above referred to.

The Proceedings in Cause No. 103 in the Court Below were an Absolute Bar to this Suit.

The bill in No. 103 was filed nearly three months prior to the bill in this cause. It involved all matters in this cause, including the liability of stockholders on unpaid subscriptions. The court had taken complete jurisdiction of the property of this corporation, control of its management and business and had authorized the issue of trustee's certificates, which it made a first lien upon its property. On the face of the bill, all creditors were invited to come in. All this was well known to the complainants, and the bill in No. 103 is referred to in their bill in this cause and the record and testimony in that cause made part of the record in this. They could have come into that cause and litigated every question presented in this cause. Every question presented in this cause is adjudicated by the court in that cause, and we submit that complainants are bound by the decree in that cause although they were not formal parties to it. The decision of this court in Stout *vs.* Lye, 103 U. S., 66, and the authorities referred to therein, it is respectfully submitted, are conclusive upon this question.

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